Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.__

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1995

Tasker Generes, Petitioner

v.

Patricia Morrell and Edward L. Morrell, Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

APPENDIX "B"
TO
PETITION FOR WRIT OF CERTIORARI

I. BANKRUPTCY COURT ORDER FOR ADVERSARY 92 A 01283
II. TRIAL TRANSCRIPT FOR ADVERSARY 92 A 01283
INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

Tasker O de Generes
Counsel of Record
Counsel for Petitioner
1845 Happ Road
Northbrook, IL 60062-5643
(847) 564-8944
June 19, 1996

69pp

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EOD JUL 15 1993

IN RE:	)	
TASKER GENERES and DOROTHY	)	91 B-17220
GENERES,	)	
Joint Debtors,	)	Chapter 1 1
TASKER GENERES	)	Judge Coar
Plaintiff,	)	Adv. No. 92 A
	)	01283
	)	
EDWARD L. MORRELL	)	
and PATRICIA MORRELL,	)	
Defendants.	)	

FINAL ORDER

This cause having been heard in an adversary proceeding on June 30, 1993, the Court being fully advised in the premises having heard the testimony of these witnesses, examined the exhibits and other evidence proffered during said hearing . And having made its findings of fact and conclusions of law on the record at the conclusion of the hearing:

IT IS HEREBY ORDERED AND ADJUDGED:

1. Plaintiff Generes' objection to the claim filed by the defendants Edward and Patricia Morrell is denied.

2. The claim heretofore filed by defendants Edward and Patricia Morrell in this estate is allowed in full .

3. Plaintiff Generes's counterclaim against the defendants is denied.

4. Each party shall bear their own costs in this matter.

5. The Clerk of the Court is hereby directed to enter final judgment in favor of defendants Edward and Patricia Morrell and against the plaintiff Tasker Generes in accordance with this order.

Dated: July 8, 1993

_____

David H. Coar
United States Bankruptcy Judge

Prepared and Submitted by:

Mark E. King, Esq. (ARDC No. 06190091)

DAVID B. KAHN, LTD.
200 West Adams Street, Ste 2701
Chicago, Illinois 60606
312 / 855-0955

PREVAILING PARTY SHALL FORTHWITH SERVE A COPY OF THIS ORDER ON THE DEBTOR(S) AND ALL PARTIES ENTITLED TO NOTICE.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	June 30, 1993
TASKER GENERES and DOROTHY	)	2:00 P.M.
GENERES,	)	Chicago, IL
Joint Debtors,	)	Chapter 1 1
TASKER GENERES	)	Judge Coar
Plaintiff,	)	No. 92 A 01283
	)	
	)	
EDWARD L. MORRELL	)	
and PATRICIA MORRELL,	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID H. COAR

APPEARANCES:

For the Plaintiff:

Mr. Ronald L. Sandack
(Smith, Williams & Lodge)
55 West Monroe Street
Chicago, Illinois 60603

For the Defendants:

Mr. Mark King
(David B. Kahn Ltd.)
200 West Adams Street
Suite 2701
Chicago, Illinois 60606

THE CLERK: **92 A 012B3, Generes versus Morrell.**
THE COURT: Good afternoon. Are we ready to proceed?
MR. SANDACK: Your Honor, my name is Ron Sandack. I'm one of the attorneys representing the plaintiff in this adversary matter, Tasker Generes. Your Honor, I have not yet filed an appearance, and I would seek leave to file my appearance instanter.
THE COURT: All right.
MR. SANDACK: We have no objections.
THE COURT: All right, that's fine.
MR. KING: Your Honor, I'm Mark King. I represent the defendants, Ed and Patty Morrell. I have previously filed an appearance in this matter.
THE COURT: Mr. King, let me just make one comment. I took a look at your witness list. If I had seen it earlier, I would have stricken it. Page 2 of the pre hearing order says. "At least 14 days prior to the hearing date the parties are to exchange and provide chambers with the names of all witnesses they intend to present at trial, together with a brief summary in the area of testimony they wish to present." I don't consider the statement, "All trialable issues," to be responsive to that pre hearing order. It's unhelpful to say that they'll testify about everything.
MR. KING: I apologize, your Honor. I was under the impression in reading your order that that would have been a sufficient response. I'm happy to be more specific, and, certainly, there was no intent to mislead the Court or the plaintiff about the nature of their testimony.
THE COURT: I didn't take it as an intent to mislead. It's just unhelpful. It doesn't provide any assistance whatsoever for me in preparing for the hearing, and I'm sure for the other side in preparing for the hearing in trying to figure out what the witnesses are here for and for preparation. It's just not helpful. So in the future, please, be a little more helpful and try to – at least if it's not clear from the letter of the order, which I think it was, provide the information requested.
MR. KING: Please accept my apologies.

THE COURT: No apologies are necessary. All right, are
MR. SANDACK: Your Honor, I have one housekeeping matter, and I'd like to address the Court. Mr. King and I did confer. I have amended my proposed findings of fact and conclusions of law. I have a scribblers error. I have talked to Mr. King about it, and I also wish to convey my apologies for not putting the jurisdictional statement on my first conclusions of law. It is included in my amended proposed findings of fact. May I hand it to your clerk, sir?
THE COURT: Yes, sir.
MR. SANDACK: Thank you.
MR. KING: Your Honor, the parties here essentially are going to present the same witnesses in their Cases in Chief. And if it's acceptable to the Court, my desire would be to not cross examine the plaintiff in this matter until we get to the Defendant's Case in Chief. The Plaintiff's Counsel has no objection to that, but, of course, we'll take our direction from the Court.
THE COURT: That's fine.
MR. SANDACK: I think we're prepared, your Honor.
THE COURT: All right.

OPENING STATEMENT
by Mr. Sandack

MR. SANDACK: If it please the Court. Your Honor, my name is Ron Sandack, and I am one of the attorneys representing Tasker Generes in this adversary matter against Mr. and Mrs. Morrell. The Plaintiff seeks, your Honor, a judgment against Mr. and Mrs. Morrell pursuant to a holdover tenancy which occurred when Mr. and Mrs. Morrell held over beyond the written expiration date on their lease. We believe the evidence will demonstrate and show the following: One, on or around December 18, 1990, the Morrells entered into a written lease with the plaintiff concerning rental property commonly known as 1829 Happ Road. I'll refer from time to time to it as the Happ Road rental property because Mr. Generes lives on Happ road as well. The written lease was for six months in duration at $2,200 per month. There were other provisions, of course, and one of the more significant provisions was that the lease contained a provision whereby plaintiff could elect to treat the Morrells as holdover tenants if they remained on the property beyond the expiration date written in their lease. The expiration date in the lease was June 17, 1991. Judge, I believe the evidence will show that Mr. and Mrs. Morrell remained in possession of the Happ rental property beyond the expiration of the written lease. We believe the evidence will also demonstrate that on or around July 1 of 1991, 15 days

after the written lease expired by its own terms, Tasker Generes prepared a notice to the Morrells notifying the Morrells of his intent to treat the Morrells as holdover tenants in accordance with the provisions of the written lease. The evidence will further demonstrate that Tasker Generes delivered the notice to the Morrells on or about July 1 as well. He fulfilled all contractual obligations he was required to fulfill under the written lease. I believe, your Honor, the Morrells will attempt to demonstrate that in April of I991 or May of 1991 or maybe even further, that the parties to the written lease orally modified the written lease. They're going to contend that Tasker Generes agreed orally to extend the lease either for a two-month duration or month to month. I think the difference is significant, but I believe that is what they're going to attempt to show. Mr. Generes will testify that at no time did he modify the written agreement either in writing or orally. That the written provisions of the contract should remain intact and should be held to be that which they are. Your Honor, it's uncontroverted that the Morrells vacated the property on or around August 17th, 1991, two months after the written expiration date in the written contract. After the Morrells vacated the property, Mr. Generes aggressively sought to relet the property. He put a sign outside the property, and he listed the property in the paper as an advertisement seeking renters. Unfortunately, due to market conditions beyond his control, he was unable to relet the property until Nay of 1992. Eight months transpired where there were no renters in the property. Your Honor, we are seeking judgment for the eight months pursuant to the holdover tenancy which was invoked by Mr. Generes pursuant to the written lease at $2,200 per month. We additionally seek $800 as liquidated damages for each late payment that's provided for in the contract. And finally, your Honor, we're seeking all cost, collection and attorneys' fees which are clearly provided for in the written lease. Thank you, your Honor.

OPENING STATEMENT

by Mr. King

MR. KING: May it please the Court. My name is Martin King and I'm here, as I've said, representing the defendants, Ed and Patty Morrell. Your Honor, the plaintiff here has the burden of proving his case, and this is a burden he cannot meet. It's the defendants' theory in this case that they are the victims of fraud. The fraud perpetrated by the plaintiff in an effort to, essentially, use this Court and process in this court to extort money from the defendants that the plaintiff is not entitled to. The Morrells, however, do not have to prove that. They simply have to stand on the fact that they do not have the burden of proof here. Much of what Counsel has said in his

opening statement is simply not controverted. Let me go over a couple of elements that he didn't bring out and which we believe the evidence will be virtually conclusive on these points. The Morrells sought to rent this house of the plaintiff because their home was badly damaged in the fire on or about December 15, 1990. Within three days of that time they had negotiated a lease with the plaintiff and had specifically negotiated for a six-month tenancy. The reason, of course, because their home was being rebuilt, and they hoped to have their home rebuilt and be able to move in at the end of that six-month period. Their insurance company under the terms of their insurance policy, the evidence will show, was responsible for reimbursing them for the rental cost here which were substantial under the lease. The evidence will also show that on or about April or May of 1991, approximately one or two months before the expiration of the written term of the lease, my clients determined through consultation with their contractor who was working on the principal residence, that their residence would not be available to them in the middle of June, the approximate time the written lease with the plaintiff would expire. At that point the defendants began negotiating with their insurance company to determine whether the insurance company would reimburse them for the additional time in the rental property. And simultaneously and very reasonably, they began negotiating with the landlord to the same effect. The parties reached an agreement under which the Morrells could stay at the property for, to quote the landlord, "As long as they wanted." It was perfectly agreeable to him, and that's what the evidence will show. The Morrells did, in fact, stay at the rental property past the 17 computed – the date upon which the lease was to expire but for this oral modification. The parties in telling here will not only be the testimony of the plaintiffs, which will be very credible and straightforward, but also the testimony of the contractor who was working on the plaintiffs' house and who will testify that he advised the Morrells that their property would not be ready until approximately the middle of August. Also telling will be the testimony of the plaintiff in this matter. The plaintiff by the 17th of June claims to have had no consultation what soever with the defendants about whether they were going to move out of the property or remain in the property. The evidence will show that as of the 17th of June, even though he had no consultation what soever, he had made no effort to list the property for rent through Pioneer Press advertisement. He had not taken the sign that he normally places in front of the property, the for rent sign, and placed it there. He simply made no efforts at all despite the fact he could not have possibly known, under his

own version of the facts, whether the Morrells were going to stay on the property or not. I believe the evidence is also going to show that after the Morrells moved out in the middle of August 1991, they immediately began asking the plaintiff for the return of their security deposit and attempting to discover when their security deposit would be returned. Again, a perfectly reasonable and rational thing to do at the end of the tenancy. The evidence – and this will be the plaintiff's evidence out of his own mouth – is going to show that in the course of these conversations just as the defendants were asking for the return of their security deposit, not once did the plaintiff inform them that they were not entitled to a return of their security deposit because their tenancy had been extended by the act of this July 1st letter that is in dispute between these parties. That the tenancy had been extended for an entire year and did not, in fact, expire until June of 1992. Not once did the plaintiff claim to have told them that. Not once did the plaintiff claim to have told them that the security deposit would be held pending his effort the property. Even more telling and more importantly, after the plaintiffs left this property – or excuse me, I keep mixing this up. After the defendants left the property, there is no dispute whatsoever that they did not pay a single dime of rent on this property. They did not pay on the day they left, which was approximately August 17, 1991. A day that rent would have been due if the lease had been extended as the plaintiff claims. They did not pay in September or October or December. And what is telling about this, your Honor, is, again, plaintiff's own evidence out of his own mouth will show that he made absolutely no effort to demand payment of this money. He did not call them. He did not write them a letter. These parties lived in reasonably close proximity to one another, and he did not make any effort to contact them and tell them that they were in default on the rental obligation. The evidence will show, and, again, we think conclusively, he did not do this because they were in default on the rental obligations. The evidence will further show that within a couple of weeks after the defendants had moved out of the property, the plaintiff claims to have done an inspection of the physical condition of the property. And, again, his own evidence will show that as a result of that inspection, he claims approximately $8,000 worth of damage to the property. Again, this is more than – almost twice the security deposit that he was holding, $4,400. Once again, in the course of this entire dispute and until this adversary claim was filed – and more properly the evidence will show to the very eve within a week or two of the filing of this adversary complaint, more than a year after the defendant's left the property, not once did the plaintiff make any effort to collect this money.

Not once did he make any effort to document exactly what claims he was making. The evidence will show further that from and after the time the defendants left the property they diligently schedule, first, with the plaintiff, and then subsequently with the bankruptcy attorneys after the filing of this proceeding, to find out when they were going to get their security deposit returned. Not once in the course of those discussions which happened virtually monthly after this time, monthly between Mr. Morrell and the bankruptcy attorney, were they ever informed of the magnitude of the claims the plaintiff was making or even the substance of the claims the plaintiff was making. We believe the evidence will show that this behavior would have been completely irrational had the Morrells realized that they could be held over for an entire year as the plaintiff claims to have given written notice of doing so. And finally we come to the written notice itself, a letter dated July 1, 1991. In addition to all the reasons just given, the evidence as to the delivery of that letter will be as follows: The plaintiff, an attorney for 20 years, claims to have written this letter and walked next door with it. This letter that held over the tenancy of the Morrells for an entire year, even though he had no tenants waiting to move into the property, even though he had not advertised the property for rental, even though at that time he claims to have had no knowledge of what the Morrell's plans were or what their intentions were. He walked next door with this letter to hand deliver. Finding the door opened, he says he knocks and no one answers. The plaintiff, again, out of his own mouth, will say that he opens the door. The door itself was opened, and he sets this letter virtually on the front doorstep of the defendants in an envelope addressed to them and walks back to his house. And then the evidence will show he did nothing. He did not call them to confirm that they received the letter. He did not in any way attempt to follow up to make sure the understood the implications of this letter. And, more significantly, as an attorney, the evidence will show he made no attempt to deliver this letter in any way that would provide notice of receipt or any evidence of receipt. And the evidence will show that when the defendant mounts the stand he will very credibly testify that this letter was never delivered to them. It was never prepared, and it was never written. Thank you, your Honor.

MR. SANDACK: Your Honor, I'd like to call the plaintiff, Tasker Generes to the stand.
THE COURT: All right .

MR. TASKER GENERES, WITNESS, SWORN,
DIRECT EXAMINATION BY MR. SANDACK:

Q. Sir, would you kindly state your name and spell it for the record? A. Tasker, T-a-s-k-e-r, Generes, G-e-n-e-r-e-s. Q. Sir, where do you reside at? A. 1845 Happ Road, Northbrook, Illinois. Q. And how long have you resided in that residence? A. Since about 1979 or '80. Q. Sir, what is your occupation? A. I'm a lawyer. Q. What was your previous occupation prior to being an attorney? A. I was president of Phytogen. Q. How long have you been licensed to practice law? A. Since 1972. Q. And what jurisdictions are you licensed to practice law? A. In California and Illinois and in the Supreme Court of the United States. Q. Other than being a licensed attorney, what other employment have you had? A. I've been an executive of multinational food companies. Q. Sir, where did you receive your undergraduate degree? A. The University of California at Berkeley. Q. And what degree did you receive? A. Bachelor of Arts in mathematics and physics. Q. Have you received any graduate degrees other than law? A. Yes. Q. And what degrees are those? A. Masters of Science. Q. And at what institution did you receive the Masters of Science? A. Stanford University. Q. Were did you attend law school? A. DePaul University. Q. Other than residential property, do you own any other any other properties? A. Yes. Q. And where are such properties located? A. In California, a very small parcel in Minnesota, and, of course, 1829 Happ Road in Northbrook. Q. How long approximately did you own these other properties? A. Over ten years.

MR. SANDACK: Your Honor, for purposes of today, I'll refer to the Happ Road rental property so as not to confuse anyone as far as his residential property.

BY MR. SANDACK: Q. Sir, would you please describe for the Court the Happ rental property? A. It's a four bedroom – three bedroom ranch style home in a very good neighborhood with very good schools. It has a two-car garage, circular drive, nice size lot, skylights, center-island kitchen, ceramic, and hardwood flooring. It's nicely maintained. Q. How long have you rented out this property? Q. Since about 1979 or '80.

Q. Since you began renting this property out, how many tenants have possessed this property? A. Five.

Q. And who was your first tenant? A. Dr. Boon. Q. And how do you spell his last name? A. B-o-o-n. Q. And do you know approximately when he took possession of the rental property? A. About 1979 or '80. Q. And do you know approximately when he left the rental property? A. About 1987.

Q. Did you extend from time to time Dr. Boon's lease? A. Yes. Q. What was the procedure utilized for extending his lease? written letter extending my Cole lease. Q. Did Dr. Boon ever reside at the Happ rental property without a written lease? A. No. Q. After Dr. Boon, who was your next tenant at the Happ rental property? A. Ms. Necier. Q. How do you spell Necier? Do you know? A. No. Q. Did you have a written lease with Ms. Necier? A. Yes. Q. And approximately when did that lease begin? A. About November of 1987. Q. Approximately when did you vacate the premises? A. About a year later. Q. Did you ever extend her lease? A. No. Q. After Ms. Necier resided at the Happ rental property, who was your next tenant? A. Paula and Harris Rittoff. Q. And did you have a written lease with the Rittoff's A. Yes. Q. When did the Rittoffs take possession of the Happ rental property? A. Immediately upon Necier leaving. Q. Approximately do you know when it was? A. November of 1988. Q. And do you know when the Rittoffs vacated the premises? A. A little before the Morrells moved in. Q. Was the Rittoff's lease ever extended? A. Yes.

Q. And what procedure or method did you utilize to extend the Rittoff's lease? A. I used a letter to extend the Cole lease form I used. Q. Did the Rittoffs ever reside at the Happ rental property without a written lease? No.

Q. Prior to the Morrells, did you ever orally rent the Happ rental property to anybody? A. No.

Q. And why not? A. To protect myself. Q. I'd like to turn your attention to December of 1990. How did you come to meet Mr. and Mrs. Morrell? A. I believe Pat Morrell called me on the phone. Q. Did you meet with her subsequently? A. Yes. Q. Please tell the Court the substance of your first meeting with Mrs. Morrell? A. She had told me her children had accidentally caused her house to catch on fire causing damage and that they had to find some other place to live. That she was temporarily in the Holiday Inn and living with four kids in a hotel room, and it was driving her crazy. So she was quite anxious to find a place. She was looking at several other places and she, at that time, didn't have her husband with her. Q. At the time you first met Mrs. Morrell was the Happ rental property vacant? A. Yes. Q. And do you know how long it was vacant? A. Not very long, a month maybe. Q. How did you advertise for prospective renters? A. I have a nice metal sign that says, "For rent," with my phone number on it that I put in the front yard. And I advertise in the Pioneer Press, Northbrook Star. Q. Did you subsequently meet with Mr. and Mrs. Morrell after your

initial meeting with Mrs. Morrell – or phone conversation, excuse me? A. I believe so. Q. Can you tell the Court the sum and substance of your conversation and or meeting? A. The Morrells, they looked at the place. I believe I had taken Mrs. Morrell through the house and then her husband came back with her and looked at it. They mentioned again that they were looking at other places. We talked about the terms of the lease. At some juncture I gave them a lease, and they said they had to review it with their attorney or their insurance people because of the fire. Q. After this meeting that you've just described, did you have an opportunity to meet with Mr. and Mrs. Morrell again? A. Yes. Q. And what occurred at this next meeting? A. They had some changes they wanted to make in the lease, and we made changes in the lease to include their dog. And in this consequence I increased the security deposit from one month to two months for damages, and we indicated that in the rider. There may have been some other changes. Q. Was a written lease eventually signed with the Morrells? A. Yes. Q. And do you know approximately when it was signed? Q. On or about the date there on the lease itself it says the date it was signed. A. I don't recall the date.

MR. SANDACK: Your Honor, Mr. King and I stipulated to Exhibit 1, which is a copy of the residence lease. I'd like to tender your Honor with a copy at this time.

THE COURT: All right.

MR. SANDACK: May I approach the witness?

THE COURT: Yes, sir.

BY MR. SANDACK: Q. Sir, I'd like to show you what is entitled, "Residence lease." Would you take a few moments and review it? It's marked as Exhibit 1. A. I'm ready. Q. Sir, is Exhibit 1 the rental written lease you entered into with the Morrells? A. Yes, it is. Q. And reviewing the top left side it says, "Date of lease." It says, "12-18-90." Does that refresh your recollection as to when you entered into the written lease? A. Yes. Q. Sir, what was the length of the written lease with the Morrells? A. From 12-18-90 to 6-17-91. Q. That's a six-month period, correct? A. About, yes. Q. At that time, was that your customary lease period? A. No. Q. Sir, directing your attention to the backside of Exhibit 1, you'll see what seems to be your signature. Is that your signature, the second line? A. Yes. Q. And if you'd look to the backside of the rider, Page 44 it's marked. Is that your signature? A. Yes. Q. Did you see the Morrells execute Exhibit 1? A. Yes. Q. What was the monthly rent? $Z,200 a month. And so there's a rider attached to Exhibit 1, correct? Yes. Four pages, or actually two pages

utilizing both sides? A. Yes. Q. Is that the form that was attached to the original lease? A. Yes. Q. Did Mr. Morrell execute that document? A. Yes. Q. After execution of Exhibit 1, the written lease, what occurred thereafter? A. They moved in. Q. Your property is where in conjunction to the Happ rental property? A. Next door. Q. And as you live next door, what contact if any did you have with the Morrells? A. Very little.
Q. Did there ever come a time when a problem arose at the Happ rental residence? A. Yes.
Q. Do you know approximately when that occurred? A. About February of '91. Q. And what was the problem? A. They had a problem with the garage door.
Q. Who told you about this problem? A. Ed Morrell. Q. And how did he tell you about the problem? A. He left a note in my door about the problem. He wanted to be reimbursed for the repairs that were necessary to make that garage door function properly.
Q. Again, just so it's clear, how did you receive notification? A. He left it in my door. Q. And how did the Morrells pay rent to you? A. They left it in my door. Q. On a monthly basis? A. Yes. Q. Do you ever recall receiving a check in the mail by the Morrells for monthly rent? A. No.
Q. At the time of the lease, were you aware of why the Morrells were living at the Happ rental property? A. Yes. Q. And can you explain to the Court where your residence is in conjunction to the Morrell's home that was consumed by the fire? A. Their home is about two miles down Willow Road, and they're about equal. So it's probably about four miles away from my house on Elaine. So, it's nearby. Q. What was occurring at the Morrell's home during the lease with the Morrells? A. It was being repaired, and they would be bringing in a lot of smoke-damaged materials and storing it in the garage when they worked on cleaning and things like that at the rental house. Q. In or around June of 1991, did you have an opportunity to inspect or view the reparations being made to the Morrell's home? A. I drove by. Q. And what did you see in June of 1991? A. It seemed like it wasn't ready. Q. On June 17, 1991, the day the written lease was to expire, did the Morrells vacate the premises? A. No. Q. Prior to June 17, 1991, did you receive any written correspondence, a note, anything in writing from the Morrells telling you that they were going to stay beyond the written expiration of the lease? A. No. Q. Did you ever have any conversations with Mr. Morrell or Mrs. Morrell concerning extension or modification of the written lease, which is Exhibit 1 in your right hand? A. No. You had no conversations with them about extending the lease? A. No.

Q. When you observed, in the middle of June of 1991, that the Morrells had remained at the Happ rental property beyond the written expiration date in their contract, what did you do? I prepared a notification under my lease for them. Q. What was the significance in your mind, if there was any, of the Morrells staying in the premises beyond the written expiration? That they wanted to stay on. After you noticed the Morrells – after the Morrells had remained and you noticed they remained in the Happ rental property, what did you next do? A. I prepared and delivered my notice under Article 8 of the lease to the Morrells.

MR. SANDACK: Your Honor, I'd like to approach and hand you what I've marked as Exhibit 2.

BY MR. SANDACK: Q. Mr. Generes, would you please review what's been marked as Exhibit 2? A. Yes. Q. What is that document, sir? A. This is the document to notify them of my election under the lease to renew it for another term at the same rent. Q. When did you prepare that document? A. On about July 1st. Q. Did you prepare that document? A. Yes, I did. Q. And you prepared it on or about the date it bears? A. Yes. Q. And why did you prepare this document? A. To give them notice of my election under Paragraph 8. Q. After you prepared Exhibit 2, what did you do? A. I walked next door with it, after putting it in an envelope, and knocked on the door. The door was somewhat unlatched and kind of opened and so I hollered, "Is anyone there?" No one was there, so I put it down conspicuously where anybody could see it and left and shut the door. Q. Just so the record is clear, you walked it over and dropped it inside the Morrell's home? That's right. Q. Do you recall how you received payment for the month of August? A. They dropped it off between my storm door and my house.

MR. KING: Objection, your Honor. There's some ambiguity here since we're dealing with months that begin in the middle of the month. Are we dealing with the month that begins in August, or the month that begins in July?

MR. SANDACK: That's fine, your Honor.

BY MR. SANDACK: Q. When is the last check you received from the Morrells, if you recall? A. Well, I don't remember the exact date. Q. That's fine. The approximate time? A. Approximately when it would be due and when it was put in my door. Q. And that was for what month, sir? A. It would have been for August. Q. On or about August 17th of 1991 what occurred? A. They moved out. Q. How do you come to notice the Morrells moved out? A. I saw that they moved out. Q. At any time, sir,

after you served Exhibit 2, which is dated July 1, 1991, had you had an opportunity to discuss that letter with either Mr. Morrell or Mrs. Morrell? A. Yes, in talking to Ed Morrell. Q. When did this conversation occur? A. When he called me. It was two calls – and I'm not sure whether it was – I believe it was the second call from his –he was at his home in Wisconsin I understand, and he was there after he left our place for some time. Q. Let's put this in perspective. You said after they vacated the premises? A. Yes. Q. Do you know what month they vacated the premises in? A. A little after August 17th. Q. Okay, and you said he called you. He being Mr. Morrell? A. Right. Q. Okay, and what did he say to you and what did you say to him? A. I told him that I tried to get the house rented for him.

Q. In your mind what was the significance to Mr. Morrell?

A. That he didn't object or give any concern when he realized he had an obligation under the lease.

Q. And, sir, what were you doing? You said you were going to try and relet it for him?

A. Right I put up the For Rent sign, the metal For Rent sign, and I placed ads in the paper. And how long did you place ads in the paper?

A. For a long time, until I rented it. Q. When did you finally rent the Happ rental property after the Morrells had vacated the premises? A. About eight months later. Q. And who did you rent to? A. Mr. and Mrs. Sunsuebay. (phonetic) Q. In the eight month interim between tenants, did you ever receive a payment from Mr. and Mrs. Morrell for rent? A. No.

Q. Sir, did you have a demand payment in any way, shape, or form from the Morrells after they vacated the premises?

A. In my filings in the bankruptcy proceedings, I indicated on the filings that there was a holdover tenancy. Those things were filed in the bankruptcy filings and were done in about August when we filed bankruptcy. It was simultaneously practically with this lease. And so the various schedules in the bankruptcy filing indicated our status. We disputed their right to the security deposit and indicated in the schedules that there was a holdover tenancy of 2,200 a month.

Q. Sir, why didn't you walk next door or place a phone call to the Morrells after they vacated the premises and say, "Hey, you owe me money for back rent or holdover tenancy?"

A. I was at that time having intense difficulty with a lot of other things. I was handling getting my bankruptcy schedules filed and working with my attorney, and, so, that was basically it. I understand you had bigger problems at that time? I had substantial problems.

Q. Sir, last question. The security deposit, what did you do with the Morrell's security deposit that they had given you at the beginning of the written lease? A. I retained it. Q. And did you apply it against their indebtedness? A. Basically, yes.
MR. SANDACK: Your Honor, I have no further questions of this witness
MR. KING: Your Honor, I know I indicated that I was going to recall Mr. Generes, but I'd like to continue with cross examination. If he'd like to consult with Counsel before, I have no objection. But I do want to proceed with cross examination.
MR. SANDACK: That's fine. I have no problem with that, your Honor. I was just going to tell the Court – since he's going to have cross examination now, I won't close my case. I'd like to retain the opportunity to do any redirect. May I take the exhibits, unless Mr. King is going to use them?
MR. KING: You can take them.
MR. SANDACK: Thank you, Judge.
MR. KING: Your Honor, I was under the impression that we had delivered these exhibits to your chambers. Do you have them?
THE COURT: Yes, sir. MR. KING: Because I didn't bring the extra copies.

CROSS EXAMINATION
BY MR. KING:

Q. Mr. Generes, my name is Mark King. You may remember we met at your deposition several months ago? A. Yes. Q. As I understand it, sir, your claim here is that Ed and Patty held over beyond the expiration of the lease; is that correct? A. Yes. Q. And that the lease itself under the terms of the lease that you have been shown a moment ago, it expired on June 17th, 1991; Now, as I understand it, by the 1st of June of 1991, you had no conversations, as you've said, with Ed and Patty about whether they were going to continue the tenancy of the property if they needed to hold over, or, in fact, anything at all regarding their retention as of June 17th, 1991; is that correct? A. Yes. Q. The Morrells – I think you said in the rental property they were living next door to you; is that correct? A. Yes. Q. You were approximately – I think you speculated at your deposition that it was about 50 feet between the houses? A. Yes. Q. So as of the 1st of June as far as you knew, to the extent of your knowledge, the Morrells were going to be vacating the premises at the end of the lease term; is that correct?
Q. Well, they had had no discussions with you; is that correct? About staying at the property? A. Yes. Q. Upon what do you base the fact that they might have stayed at the property? I'm talking as of June 1 now? A. Yes,

you're talking as of June 1. I understand. Q. Under what basis did you make that statement? A. I made that statement on the basis that if they were going to leave, they would have told me. Q. Well, the lease required them to leave on June 17th, did it not? A. Yes. Q. Do you believe that they would have had to tell you that they were honoring the obligations under the lease? A. No, but most people just tell you. Q. But they didn't? A. No. Q. And you assumed from that they weren't leaving the property? A. Yes, and also from looking at the property. Q. I understand that. But they could have moved to some other place rather than your house? A. yes Q. They could have moved in with relatives for example; is that true? A. It's a possibility. Q. They could have moved in with friends? :A. It's a possibility. Q. As of the 1st of June, sir, what steps had you taken to advertise your rental property for rent starting on June 18, 1991? A. None. Q. Had you placed an ad in the Pioneer Press? No .Q. At your deposition you brought a very large for rent sign. Did you place that sign in front of the property? A. No, I hadn't. Q. If the Morrells had moved out of the property on June 17, 1991, you were in no position to rerent it; is that correct? A. I could put it up for rent. Q. I understand that. But there was certainly no way you were going to rent it as of June 18, 1991? A. No, it would have to be cleaned and painted. Q. So you would have – so if I understand it correctly, had the Morrells left on June 17, 1991, the property would have been vacant for some period of time after they left? A. Yes. Q. Did you at any time before the 17th of June, 1991, put up your for rent sign or place an ad in the paper advertising the property for rent? A. I'm sorry. I didn't get the date. June 17th, 1991? Before then, no. Q. Yes. Earlier we were talking about the 1st of June. Now we've moved to the 17th of June. A. Oh, I see. I didn't catch that. Q. But in any event, the sign had not been placed by the 17th. A. No. Q. Nor the ad? A. No. Q. As I understand it, before the Morrells moved in, the property was vacant for about two months at the end of 1990; is that correct? A. That's about right. Q. And during that two-month period you had an ad in the paper, did you not? A. Yes. Q. And you had your sign out in front, correct? A. Yes. Q. And it still took you two months to rent the property? A. Yes.

Q. So when the Morrells continued to stay in the property on June 18, 1991, they paid rent for that next lease month, didn't they? A. Yes. Q. And how much was the rent again? A. $2,200. Q. They paid you by check?

A. Yes. When you received that check, did you contact the Morrells and ask them why they were paying you additional rent instead of moving out as

the lease required? No. Did you contact the Morrells to ask them how long they were going to remain in the property? Q. No. Q. Did you write the Morrells a note and leave it in their door asking them what their intentions were? A. No. Q. As of the middle of June based on the rental rate of $2,200 a month, the Morrells had already paid you approximately $13, 000 in rent during the six-month lease period; isn't that correct, sir? A. Yes. Q. And they paid you every month that they lived in the property, correct? A. Yes. Q. Now, as of the middle of June when you count the security deposit that you were holding from the Morrells, you had approximately a $20,000 return on that property; is that correct? The Morrells had paid you approximately S20,000? A. I'm sorry. I don't understand what you're saying. Q. Okay. They paid rent of approximately $13, 000, correct? Yes. Q. And they also paid you a security deposit of about S4,400, correct? A. Yeah. Q. And they stayed an additional two months at the property, correct? A. Yes. And that's another S4,400, correct? Yes. Q. And they paid that to you? A. Yes. Q. So during the time the Morrells were at the property, they paid you a total of over S20,000; isn't that correct? A. I believe that's the way the numbers calculate out. Q. I'm sorry? A. Yes, I think that's the way the numbers calculate out. Q. As it turned out, as I understand it, you didn't rerent this property after the Morrells left in May of 1992; is that correct? A. Yes. Q. And during this period you had an ad in the paper, correct? A. Yes. Q. And you had your sign out in front? A. Yes. Q. So taking your testimony at face value, isn't it true, sir, that the Morrells continuing in the property for an additional two months gave you a gain of $4,400 which you otherwise wouldn't have? Q. Had they moved out in June in other words, you wouldn't have gotten that 4,000 of rent? Do you understand the question? A. I'm sorry. I didn't understand. Q. If the Morrells had left at the end of the written term, they would not have paid you rent for the month of July, correct? A. Oh, yes, that's right. Q. And they wouldn't have paid you rent for the month of August? A. Yes, that's right. Q. And, in fact, the property remained vacant until May of 1992, correct? A. That's the way it looks like it turned out. Q. So the holdover of the Morrells, if you call it that, enriched you about S4,400 over what you would have received had I they left on June 17th?

MR. SANDACK: Your Honor, I would object. That question is clearly speculation. We know for a fact they remained in the property. I don't understand what this question – what he's trying to invoke from this witness. The math is what the math is. It's a little confusing, and it does ask for speculation. On that basis, I'm going to object.

THE COURT: I'll overrule the objection.
THE WITNESS: I guess so.
BY MR. KING: Q. On the 1st of July when you supposedly delivered this letter that you testified about earlier, you had no reason to believe that the Morrells were really going to continue to rent your house until June of 1992; is that correct? A. Could you repeat the question? Is it that I had no reason to believe that the Morrells would continue to rent the house? Q. As of the 1st of July when you say you delivered this letter that, I believe, is Plaintiff's -Exhibit 2, I think, as of the 1st of July you had no reason at that time to believe that the Morrells were going to need to continue to occupy the rental property until June of 1992; isn't that correct? A. That's correct. saying? Q. I want to make sure I understand what your testimony is here. Even though the Morrells paid you an additional $4,400 of rent during the two months that they stayed beyond June 17th, and even though you knew that the Morrells were not going to need to stay in the property the additional year, you renewed their lease for an entire year anyway, is that the substance of what you're saying?
MR. SANDACK: Your Honor, before the witness answers that question, I'm going to object to the mischaracterization of saying, "An additional $4,400" The Morrells, by their own pleadings say that there was a two month extension. So there was no unjust enrichment here, your Honor. I think the characterization Counsel is placing on that is mischaracterizing the evidence.
THE COURT: I'll overrule the objection. I think the witness understands the question.
MR. KING: Could you answer the question?
THE WITNESS: I'm sorry, the dialog distracted me. Can we go over it or have her read it back?
MR. KING: May I have the court reporter read that back, your Honor?
THE COURT: Yes. (Record read.)
THE WITNESS: Yes.
BY MR. KING: Q. When the Morrells moved out in August, it's my understanding that your position is that they owed you rent for that entire ten-month period that follows August 17th, 1991; is that correct? A. They owed me rent until I rented that again, right. Q. Which is approximately 16, $18,000 more than they've already paid you; is that correct? A. That's correct.

Q. Sir, under the circumstances just out, do you think it's fair and equitable that the Morrells have to pay you for that entire year when they weren't in the property?
A. Yes, because that was the lease that they agreed to, the terms that they agreed to. And it's better for them to take the risk than for me of not renting it out. Who knows what the times are going to be like.
Q. As I understand it, sir, you didn't have a tenant who was ready to move into the property on June 18; is that correct? A. That's correct. Q. And you didn't have a tenant on June 19th either? A. Nope. Q. And between, in fact, June 17, 1991 and July 1st, 1991, when you claimed to deliver this letter, Plaintiff's Exhibit No. 2, you didn't have a tenant at any point in that period? A. No. Q. You didn't turn away any prospective renters in other words? A. No. Q. And no one inquired about renting the property because you had not advertised the property; is that correct?
A. Exactly. Q. Going to this July 1st letter, and I'll show it to you. It's Defendant's Exhibit G. I'd like to hand that to you. This is identical to Plaintiff's Exhibit No. 2, which you saw earlier. Q. As I understand it from your testimony, you stated the purpose of delivering this letter was to exercise the right given you under the lease -A. Yes. Q. – to renew the lease for a one-year period in the event of a holdover; is that correct? A. Yes. Q. Now, as of the 1st of July, as I understand it, the Morrells were not delinquent on their rent? In other words, they paid you for the rent beginning June 18th; is that correct? A. Yes. Q. When they paid their rent, sir, on June 18th or about June 18th, 1991, did you inquire about their intentions? I believe you said you didn't, but I want to make sure I have that refreshed in my mind. A. I didn't. Q. You didn't. You just took the rent from them, as I understand it? A. I took the check and deposited it in the bank, correct.
Q. And between the time that they paid you that rent and the 1st of July, you had not contact with them whatsoever about their intentions or plans with respect to the rental property? A. No.
Q. Did you have -- well, let me back up. When the Morrells held over and stayed at the property on June 18th, that was a violation of the lease; isn't that true?
A. The lease provides for holding over.
Q. The lease also provides a termination date, does it not? A. It provides a termination date, but you'd have to look at those things in conjunction. You can't look at them independently. Q. The lease requires them to vacate the property as the termination of the lease, does it not?

A. Yes, I did not file an eviction suit, if that's what you're getting to.
Q. No, that's not what I'm getting to al all. What I'm getting to is as of June 18, 1991, they were in violation of material terms of the written lease; is that true? A. Yes.
Q. Did you take any steps to notify them about their default in this term of the lease?. A. As I've said, I didn't file an eviction suit. I didn't do anything like that. Q. As I understand it, this letter that you have in front of you, Plaintiff's Exhibit G, this is your first communication with the Morrells about their holdover in the property, under your testimony; is that true?
A. I think so.
Q. Now, the purpose of this letter, as you've talked about, was to exercise the right that was granted you under the lease in the event of a hold over. That's your testimony, correct? A. Yes.
Q. And failure to deliver the notice means that you cannot exercise that right; is that true?
A. No. I believe that under common law acceptance of the rent constitutes a holdover tenancy too. So either way, whether you use common law or under the lease, it's still a holdover tenancy.
Q. Sir, if you'd look at Defendant's Exhibit G at the language that you quote from Paragraph A of the written terms of the lease. The written terms of the lease gives you 30 days after the beginning of the holdover in order to deliver this notice; is that correct? A. That's correct.
Q. And you would agree with me, sir, that if you waited until the 31st day to deliver this notice, you would not be able to exercise the rights granted to you under the lease; is that correct?
A. The common law rights, they say you could exercise. It's a matter of just merely accepting their checks and continuing them without suing them for eviction. That's my understanding of the holdover law.
Q. Well, I don't want to get into a discussion of the understanding of the law here, but what I'm trying to understand is this letter purports to exercise a right granted under the written lease, does it not? A. Yes.
Q. There is no reference in here to any common law rights anywhere in Defendant's Exhibit G, is there?
A. They're always incorporated in every lease.
Q. I'm not asking you that. What I'm asking you is in this letter, Defendant's Exhibit G, you make no reference to any rights under the common law? A. These include rights under the common law. They're included in each lease. Q. If you could just listen carefully to my question. I'm not saying that they're not included in the lease. I'm just talking about

Defendant's Exhibit G, the letter you have in front of you. Now, correct me if I'm wrong, but I see no reference in this letter to any common law rights; is that correct? A. No. Q. Where is there a reference? A. It says, "If held over past the expiration of your lease, this is your written notice." Q. And then you go on to quote paragraph – it says, "Your written notice exercising the option under Paragraph 8-A of the lease." That's a reference to the written lease, is it not? A. That refers to the lease. Q. And then you go on to quote from Paragraph 8 of the lease, right? A. Right. I quote the Paragraph 8 of the lease. Q. As you sit here today, sir, you have no proof, no written proof, other than your testimony here that you actually delivered this notice, do you? A. No. Q. You had been an attorney by the time you wrote this notice approximately 20 years; is that correct? A. Yes. I believe if you do the math it is actually 19? Q. Whatever. You could have mailed this notice, could you not? A. Yes. Q. You could have sent it certified mail? Yes. Q. You could have sent it registered mail? A. Yes. Q. In either event you would agree that you would have a written receipt showing this letter had been received by the Morrells; is that true? A. Not necessarily. What could happen is that the letter would be refused or not picked up. Q. That's always a possibility, but you didn't get to that point, correct? A. No. Q. In addition to hand delivering the letter as you've testified, you did not, in fact, also mail a copy of the letter, did you? A. No. Q. In a way that would assure a receipt? A. No. Q. I take it from the exhibits that you turned over that you didn't prepare a written receipt that you could have had Mr. and Mrs. Morrell sign when you hand delivered the letter to them? A. No. Q. As I understand your testimony, in fact, you did not even deliver the letter to them. You did not hand it to them personally; is that correct? A. I did not hand it to them personally. Q. When you took the notice to their front door to deliver it to them, was it your intention to give it to them personally if they were at home? A. Yes. Q. Was it your intention to – let me strike that. Q. When you got to their house, as I understand it, their front door was open; is that correct? A. It wasn't opened. Q. Is there some sort of screen door or storm door and then a more formal wooden entry door? A. Yes. Q. As I understand it, the wooden entry door at least was not completely closed? A. Yes. Q. I take it the storm door, the screen door was closed? A. It was closed. Q. And you knocked on the door; is that correct? A. Yes. Q. And no one responded? A. That's right. Q. Since the door was opened, did you think that someone was home? A. I thought there was that possibility. Q. Did you look around in the yard to see if maybe Mr. and Mrs. Morrell were out in the yard working or something like that? A.

No. Q. Did you see the children in the yard playing? A. No. Q. Did you hear them? A. No. Q. Did you walk around the back of the house to see if they were gardening or something like that in the back of the house? A. No. Q. As I understand it, you opened the door and you called out. I take it no one answered the call? A. No one answered the call. Q. So as exactly as you can, can you tell us exactly where you I placed the letter? Did you place it on a table or did you placed it on the floor or some other place? A. As you come in, there's a wall. There's a ceramic floor. There's a wall on this side, and there's a closet on that side. And there's sort of an art display area and a wall that's not too far that opens into this atrium. And I put it next to the wall facing out. Q. You actually placed in on the floor? A. On the floor, yes. Q. And I take it you placed it face up with the label – with the name and address clearly visible? A. Clearly visible against the wall. Q. Were other things on the floor there?____ So anyone walking into that entry hall, that's naturally going to draw their attention? A. Yes. Q. You knew, of course, that the Morrells were in this house because of the fire in their principal residence, correct? A. Yes. Q. And that they were in the process of having their principal residence restored? A. Yes. When you delivered this letter, which is Defendant's Exhibit G you expecting to get a reaction from the Morrells? A. No

Q. You weren't expecting them to respond in any way at all?

A. I was expecting them to pay the rent.

Q. Did you not consider that they might be angry because you had renewed their lease for an entire year?

A. They knew that was a possibility under the lease, and so they should have expected it. Q. So you felt that they would simply accept their obligations and pay the rent? A. Exactly.

Q. In any event whatever your expectations were, they did, in fact, respond to this letter according to your testimony; is that right? A. Right.

Q. They didn't call you and attempt to negotiate with you over the terms of the renewal?

A. No, they just paid the rent. Q. And I take it from your testimony that you never in any way attempted to follow up with them to ensure that they did in fact receive the letter? A. I didn't. Q. Did you at that point, this is July 1st, 1991, have any belief about how long the Morrells were going to need to continue to occupy the rental property? A. I thought it might be for a substantial longer period. Q. And upon what did you place that conclusion? Or did you place that conclusion at the time? A. For one

thing, I was remodeling the house down the street, and he also had to have his lease extended and extended and extended because the work didn't progress as expected. Q. You're talking about the tenant that proceeded the Morrells in the rental property? A. Right. Q. Which would have been something less than a year before you delivered this July 1st notice; is that correct? A. Approximately six months, right. Q. Did you know the Morrell's telephone number at the rental property? A. I had it. I didn't memorize it. Q. But you had it available to you? A. I had it. Q. Did you telephone them to discuss their obligations under this extension? A. No. Q. I'm talking about at any time after the delivery of this letter? A. No. Q. Their house, and I believe we went over this earlier, is about 50 feet away from your principal residence. So you must have seen the Morrells coming and going as they pulled into the driveway or weeding or gardening or whatever they did in the yard there while they were at the rental property? A. Well, they had a crew that did the gardening. Q. But they were living in the rental property, correct? A. Yes. Q. And they did come and go? A. Yeah, I saw them come and go. Q. And they had four children, correct? A. They had four children. Q. And the children were playing in the yard, correct? A. Now and then, yes. Q. And they were supervised by an adult? A. Yes, they had several house people who would watch over the children. Q. When you saw the Morrells coming and going after the 1st of July 1991, after you had left this letter for them, did you call out to them just to make sure that they received this letter or call their attention to it? A. No. Q. And did they call out to you saying, "What are you doing? Why did you do this to us?" Or anything of that nature? A. No. Q. As I understand it, this July 1st letter, you never discussed that letter with your wife either, did you? Q. No, I didn't.

Q. Or with anyone else other than your attorneys in this action? A. Just the attorneys. Q. Let me make sure we've got the dates right. This letter was delivered on the 1st of July 1991; is that correct? A. Yes. Q. And the net rental payment under this extension would have been due approximately the middle of July; is that correct? Q. When the Morrells paid the rent the next month, did they enclose a note to you asking you to explain or justify the renewal of the lease? A. No. Q. Did they enclose anything with the rental payment acknowledging the renewal of the lease? A. No, they didn't. Q. I believe you said they normally brought the rental payment over to you. Did you accept that rental payment in July by hand delivery? A. They left it in the door. Q. At some point at least the Morrells came to you and told you they were moving out in the middle of August; is that correct? A. Yes.

Q. I believe it was Mrs. Morrell at some point who told you that they were going to be moving out around the 17th of August of 1991; is that true? A. Yes. Q. And that was a face-to-face conversation? A. Right. She was in the driveway. Q. Did she mention the renewal of the lease terms for the entire year? A. No. Q. Did you mention it? A. No. Q. She did, however, inquire about the return of the security deposit you were holding on the property; is that true? A. I think she did inquire about it. I don't recall exactly what was said.

Q. Well, as I understand it, at that time, and this was sometime after the 1st of July of 1991 and sometime before August 17th, 1991, you believed that you had renewed the lease for an entire year; is that correct? A. Yes.

Q. And under the terms of the written lease which were incorporated in this renewal, you were entitled to hold the security deposit until the termination of the lease; isn't that true? A. That would be correct. Did you mention this fact to Mrs. Morrell? No, I didn't. Q. As I understand it, sir, shortly after the Morrells moved out, Mr. Morrell – excuse me. Let me back up. You knew that the Morrells went on vacation immediately after vacating the property; is that correct? A. Yes, that was one of the things that Mrs. Morrell told me, that she was leaving for vacation. Q. And they went to a vacation property in Wisconsin I believe? A. Their vacation home in Wisconsin. Q. Now, a couple of days after the Morrells moved out, Mr. Morrell telephoned you from that vacation home, did he not? A. Yes, he did. Q. I believe you testified about that when Mr. Sandack was questioning you? A. Yes, that's right. Q. Mr. Morrell at that time essentially asked you if you had an opportunity to inspect the condition of the property since they moved out, did he not? A. I think he did. Q. And had you by that point? A. I'm not sure if I had or not. I probably looked through it. I may not have done any detailed analysis at that point. Q. You didn't tell him during the course of that conversation that you had discovered substantial property damage to the home, did you? A. I don't really recall the conversation with Mr. Morrell. Q. Well, ultimately, you made a claim of property damages for over $8,000 in this litigation; isn't that true?

A. That's right. I remember talking to him about his kids driving up and down the corridor on their bicycles damaging the walls.

Q. But you don't have any recollection of him speaking in a magnitude of damage of approximately $8,000; is that right? A. No, I don't. Q. Now, Mr. Morrell also asked you directly about the return of the security deposit did he not? A. I think he may have. Q. And in response I believe – just so

we're clear on the- this was actually a two-phone conversation on the same evening; isn't that true? A. It was a two-phone conversation. Q. And you had a conversation about an hour later. A. He called back to continue the discussion further; isn't that true? A. Right. And I'm not really able to distinguish much between the two. Q. I understand. So consider my questions here to being directed to these conversations as a group since it's understood that you can't establish what was said in one as opposed to the other. A. Thank you. Q. In those conversations Mr. Morrell did directly ask you for , the return of the security deposit or about the return of the security deposit, did he not? A. He may have asked about the return of the security deposit. Q. And as I understand it, you responded by telling him that you had filed bankruptcy; isn't that true? A. Yes.

Q. And when, approximately, did you file bankruptcy in relation to the date the Morrells moved out of the rental property? A. It was about the same day.

Q. And you told them after advising them of the bankruptcy filing that he would be receiving some formal written notification of that; is that true? **A. Right, Mr. Brustein sent it out. Q. Because you had scheduled Mr. Morrell as one of your creditors. A. I had scheduled him.**

Q. Because you were holding his security deposit? A. I scheduled him, yes. Q. And you did that even though at that point in time you did not owe him the return of the security deposit at least by your understanding? A. Yes. Q. In other words, the debt wasn't mature or the obligation wasn't mature? A. At that point, I didn't pay any attention. Q. And, in fact, even if you hadn't filed bankruptcy under your testimony here you wouldn't owe him the return of the security deposit until the earliest, June of 1992; isn't that true? A. That's not necessarily true. Q. That was certainly the terms of the written lease, was it. A. Yes. Q. So even though you could have given it back earlier, you were not legally obligated to return it until the lease term ended? A. If I rented it out before like the next month, at that point I would be obligated to return his deposit. Q. That's your understanding? A . That's my understanding. Q. Now, isn't it true that even if you rerent the property –hypothetically, if you rerented the property a month later – in fact, you did. We don't have to be hypothetical. You rerented the property in May of 1992. The Morrells are still liable to you for any shortfalls expiration of their lease, correct? A. Yes. Q. Because the new tenant is technically a subtenant of the Morrells; isn't that true? A. That may correct . I'm not really sure about that actually. Q. At the very least, the Morrells wouldn't have been liable to you until June of 1992 when their lease term

supposedly ended; isn't that correct? A. They may be correct. Q. In fact, you're making a claim here, as I understand it, in part because the new tenant who moved in in May of 1992 was only paying $2,000 a month; isn't that correct? A. Yes. There is a deficiency of $200. Q. So you're asking the Morrells to pay the $200 for each of the months remaining after you rerented the property? A. That's right.

Q. When Mr. Morrell asked you about the security deposit, you advised him of the bankruptcy filing. You told him to deal with your bankruptcy attorneys, did you not? A. Yes, I did. Q. And you identified those attorneys, correct? A. I identified them.

Q. But you didn't tell Mr. Morrell then that he owed you rent on the property for the month beginning August 18th, 1991, did you? A. I don't recall what I did. Q. Well, it is clear, is it not, that the Morrells – and the substance of your claim is that the Morrells didn't pay you rent after they left the property? A. That's right. They didn't. Q. So at the time you had this discussion with Mr. Morrell, the Morrells were delinquent in their rent; isn't that true? A. Yes, right. Q. At least according to your testimony here? A. Right. Q. But in the course of this conversation, you never told Mr. Morrell that he owed you rent? A. No, I don't think so. Q. And you didn't tell him that he wasn't entitled, under the terms of the lease, to the return of the security deposit until June of 1992, correct? A. No, I didn't tell him that either. Q. You told him to talk to your attorneys? A. I told him to talk to my attorneys. Q. You also told him that you wanted to inspect the property with him together, as I understand it, isn't that true? A. I think I talked about inspection, right. Q. When he returned from the vacation you wanted to walk through together; is that correct? A. Right. Q. Did you say anything, I'm talking about what you said, in the course of that conversation that clearly informed the Morrells that they were obligated to continue to pay you rent following their vacation of the property? A. No, I don't think – other than what I previously testified to. That's the extent of it.

Q. Did the Morrells say anything to you that indicated that they understood their obligation to continue to pay the rent? A. Yes, that's what I understood from what they had said to me.

Q. If I understood your testimony on direct examination, you made a statement to Mr. Morrell that his lack of a response led you to conclude that he had understood his obligation? A. That's right.

Q. I was talking about something different. Did he affirmatively state anything in the course of either of these conversations that led you to believe that he had understood his obligation to continue to pay you rent? A. Well,

that's kind of affirmative even though it's done by - Q. Did he orally say anything? A. He didn't orally say, "Oh, yes, I know I've got to pay each month, and I'm not going to pay and have a fight about it." Q. When the Morrells moved out on August 17th, 1991, you saw them moving out, correct? There was probably a big truck in the driveway for instance? A. I believe there was a rental furniture truck there or something like that, yes. Q. And at some point in the course of that day Mrs. Morrell, I believe, came over and dropped off the keys to the property; is that true ? A. No. I don't believe I got the keys, nor did I ever get the garage door openers back. Q. At some point Mrs. Morrell came over and told you though she was leaving? You testified to this conversation in the driveway. A. Yes, it took place in the driveway. Q. Now, at the time the Morrells moved out, had you placed the for rent sign in front of the property? As of the day they moved out, before they left but the day they were leaving, was the for rent sign up at any time before they left the property? A. I don't think so, no. A. Had you put an ad in the press advertising your ranch home for rent at any time before the Morrells left? A. No, I hadn't. Q. So you knew that the Morrells were going to owe you some rent because the property was certainly going to be vacated for some period of time while you got word into the press that you had property for rent? A. yes. Q. And yet you didn't say anything to Mrs. Morrell about her obligation to pay the rent? A. No, I didn't. Q. And when she asked about the security deposit you didn't indicate that the security deposit was going to be reduced by at least $2,200 because the property was vacant? A. No, I didn't. Q. As I understand it, you didn't ask Mrs. Morrell for the next month's rent either? A. No, I didn't. Q. And she didn't give it to you either? A. She didn't give it to me. Q. After the Morrells left, let's say the first week, you didn't get a rent check from them then, did you? A. I don't know. Q. Well, isn't it the substance of your claim, sir, that they didn't pay you rent after they left? A. That's right. But you were saying something about a particular time. I was confused. Q. At any time during the month of August? A. I didn't get any further rent after they moved out. Q. And you didn't get any rent in September either, did you? A. No. Q. Or October? A. No. Q. Or November? A. No. Q. Or December? A. No. Q. Now, by December, they're four months behind in their rent. They're over four months behind, aren't they? And that's almost $10,000, isn't it? A. Yes, it is. Q. Did you call them up and ask them to pay you the rent? A. No, I didn't. Q. You didn't pick up the phone? A. No, I didn't. Did you go to the house and ask them where the rent was? No, I didn't. Q. Well, we saw earlier Defendant's Exhibit G. That's a letter you

wrote renewing the lease. Did you write a letter like that saying, "You owe me $10, 000"? A. No. All they got was the bankruptcy schedules indicating liability. Q. I want to talk about that in a few minutes, but let's hold that for a moment. I'm talking about now direct communications with you to them. And also about this time, as I understand it, you were in bankruptcy, correct? A. Right. Q. You were having financial difficulties? A. Right. They didn't come in and do an interrogation of the debtor or me either. Q. I'm sorry, what was that in response to? A. To your question whether there was some sort of conversation between us about - Q. Then you misunderstood my question. I was talking about the efforts that you made to collect the debt that they owed you. A. I see, okay. Q. And you hadn't made any effort at all, as I understand your testimony? A. Well, the testimony is what it is. Q. And you were – we kind of got sidetracked here. I'm going to try and pick up where I left off. You were in bankruptcy at this time? A. Yes. Q. And you were having financial difficulties? A. I was. Q. And $10,000 would have been nice to have, wouldn't it? A. It wouldn't have gone anywhere towards the problem I had. Q. Well, let me put it another way. If you seen $10,000 sitting on the street corner somewhere waiting to be picked up, you would have bent down and picked it up, wouldn't you? A. Yes. Q. Whatever your other problems? A. Yes. Q. And I take it you didn't just drop into bankruptcy in the middle of August. You saw these financial troubles coming during 1991, did you not? A. For the circumstances of the bankruptcy, it occurred because of an unexpected turn of events. Q. Well that unexpected turn of events was a judgment rendered against you at the end of 1990, isn't that true? A. That's right. Q. Okay, so in July of 1991 you had this large judgment hanging over your head, isn't that true? A. There was an appeal pending, and there was a lot of things going on in the litigation. Q. There was an appeal pending in August of 1991, wasn't there? A. At some point – Q. There still is an appeal pending; isn't that true? A. There is no appeal pending. Q. Well, there certainly was an appeal pending in August of 1991; isn't that true? A. I'm not sure of that date. At some point the appeal wasn't pending any longer. Q. And was there an appeal pending in July of 1991? A. Yes, I believe so. Q. And you found time not with standing your financial problems in July to write them a letter renewing their lease for a year; isn't that correct? A. Yes.

Q. But you didn't find the time in October or November or December to send them a notice of past due rent; is that true? A. No, I didn't send them

notice of past due rent. Q. The purpose of renewing the lease for an entire year was to ensure that you would receive that rental income, wasn't it? A. Yes. Q. You took no effort to collect the rent that was due and owing? A. That's correct. I reported it to my attorneys. Q. Aside from that. By the 17th of September, that's one month after they moved out, you'd done an inspection of the property, had you not? A. I had done an inspection, right. Q. You'd done an inspection for physical damage to the property ? A. Yes. Q. But in addition to there being a security deposit securing you for the payment of this rental on this one year renewal, the security deposit was security for the physical damage during the terms of the Morrell's occupancy, correct? A. Yes. Q. As I understand it, you discovered substantial damage to the property chargeable to the Morrells in your mind; isn't that true? A. Yes. Q. And, ultimately, that was the claim in this lawsuit, correct? A. Yes. Q. And do you recall at this point how much money you demanded because of physical damage to the property when you filed this complaint? A. I believe it was about $8,000. That's my recollection. Q. Now, by my reckoning that exceeds the security deposit almost twofold; isn't that true?

A. That's correct. A. So in addition to this unpaid rent, these people had trashed your property in your mind; isn't that true? A. Yes. Q. And they were only in the property for eight months, correct? A. Yes. Q. When Dr. Boon rented the property, I believe you said he was your first tenant on the property?

A. Yes Q. He rented the property for a number of years, didn't he? Q. How much of a charge did you take against his security deposit when he left? A. I don't believe I took anything. Q. And you didn't take anything from the second tenant either, did you? A. I don't believe so. Q. And you made a special arrangement with Mr. Rittoff, the third tenant, the one that proceeded Mr. Morrell, but you at least didn't take any of the security deposit because of physical damage to the property, correct? A. Yes. Q. So as I understand it, you had this rental property rented out for over ten years by this time, correct? A. Yes. Q. And not once did you take any deduction from any other tenant's security deposit, right? A. Right. Q. And Mr. and Mrs. Morrell were there for a period of eight months and you demanded $8,000 from them for damages to the property, correct? A. Yes. Q. And you still didn't notify them of this though? A. No. Q. You didn't send them a letter?

A. No. You didn't call them? A. No. Q. Your wife, as I understand it, goes to the same church as Mrs. Morrell; is that true? A. Yes. Q. Did you ask

your wife to mention this to her? A. No. Q. Did you talk about the damages to the property at all with your wife? A. I may have mentioned it in passing. Q. Well, it was certainly a magnitude of damage out of all your past experience, beyond all your past experience; isn't that true? A. Well, of course. Q. So by the end of the year, 1991, The Morrells owed approximately $10,000 in rent by your reckoning, and another $8,000 because of damage to the property Let's skip ahead. Oh, I'm sorry. I skipped something. Let's backup. When you made this damage calculation you went through the property and inspected it, correct? A. Yes
Q. Mr. Morrell didn't go with you? A. No, he never came over. Q. And you never called him about it, did you? A. No, and he never called me either.
Q. I understand that. You didn't write him asking him when it would be convenient for him to go through the property? A. No. When you went through the property you took notes of what was wrong with the property; is the correct? A. I did Q. And you Ultimately disposed of those notes you took at the time you made the inspection, right? A. Yes. Q. And you disposed of them by the time of your deposition earlier this year; isn't that true? A. Yes. Q. Now, if we skip ahead a few months, it is let's say April, right after tax day. It's April 17th. The rent is due on your rental property. The Morrells still hadn't paid you any money, had they? A. All of those times when they didn't pay, I've acknowledged that repeatedly.
Q. The property was still vacant, was it not? A. The property was vacant until it was rented to Mr. and Mrs. Day. Q. And you were still in bankruptcy, correct? A. I was still in bankruptcy. Q. Now, you can calculate this out yourself, but by the middle of April, the rental amount that they owed you is approaching $20,000, isn't it? A. Yes. Q. And you still have this $8,000 in damages from their occupancy? A. Yes. Q. And you knew about that by April 15th too? A. Yeah. Q. That's almost $30,000, but you still didn't contact them about it; is that right? A. That's right.
Q. As far as you know by the 17th of April 1992, your attorneys hadn't contacted the Morrells about it either, had they? Again, you can only talk about as much as you know. Q. As far as you know they hadn't right?
A. I informed my attorneys of it. They were wisely apprised of it. As far as I could see it was filed on the schedules, the bankruptcy schedules, and the notices had been sent out and they got the schedules. So as far as instituting this litigation, the attorney who did it, they thought it was best to do it.
Q. Aside from instituting this litigation which was begun in September of 1992, over a year after the Morrells left, you made no efforts to collect the

debt that you claim the Morrells owed you, correct? A. Yes. I just informed my attorneys of the problem. Q. Other than filing this lawsuit as far as you know, your attorneys didn't make any effort to collect it either, correct? A. I don't know. Q. As far as you know then they didn't? A. I don't know. Q. Now, I'd like to talk about your bankruptcy filing. You're aware, sir, that the Morrells filed an objection to the confirmation of your bankruptcy plan, aren't you? A. Yes, I hear it was very detailed. I didn't expect that kind of objection from a $4,400 claim holdover. The detailed work looked like a legal mastermind. It was a very long, extensive documentation objecting to whatever it was, the plan. It stunned our attorneys, and everybody was really surprised that somebody – it looked like somebody had spent a great deal of money preparing it. Q. Well, aside from the money that had been spent preparing it, Mr. Morrell showed up at the confirmation hearing, did he not? A. Yes, that was a surprise too. Q. He personally appeared?
A. Yes, he did.
Q. Now, the substance of the Morrell's objection to your bankruptcy plan, do you recall that? A. No, but what I do recall was this very long, extensive, complex legal memorandum that quoted the law that I don't think anyone except a real expert in bankruptcy would understand. That's my understanding from Mr. Brustein. This was the work of a very brilliant person.
MR. KING: I had no part in preparing that document. This has not been marked as an exhibit, but it is part of the record in this case, your Honor. This is the Morrell's objection to the debtor's first amended plan of reorganization. Here's a copy for you and opposing Counsel.
BY MR. KING: Q. Mr. Morrell – Mr. Generes, I'd just like to show this to you and I'd like you to take a look at it and review it and see if it refreshes your recollection as to the substance of the Morrell's objection to your bankruptcy plan?
MR. KING: You've had a few minutes to review it. I'll pose the question to you again.
BY MR. KING: Q. What was the substance of their objection to your bankruptcy plan? A. I'm sorry, I don't understand this document. It's got to speak for itself. I can't summarize. Q. Let me refer you specifically to the second paragraph on the first page under the heading, "Introduction." It's about four lines long, and maybe you could read that. Not out loud, but to yourself. A. I'm sorry, the second paragraph? A. The second paragraph under the heading, "Introduction," on Page 1 of this document? What about it? Q. Well, as I understand it, sir, the Morrells were saying in this

brilliantly prepared legal document that you had scheduled their claim as disputed, but you had not told them the basis of the dispute. Isn't that the substance of what they're saying here, sir? A. That's what they say.
Q. And it was filed on August 17, 1992; is that true? A. Yes.
Q. So at least in the Morrell's mind, whatever filings you made in bankruptcy, you hadn't informed them of the substance of your holdover claims for example; isn't that right? A. Apparently they hadn't informed them or their attorneys. Q. You hadn't informed them of this $8,000 property damage claim?
THE COURT: Mr. King, I don't understand where we're going with this. The fact that the contend that they didn't understand it is of no relevance whatsoever to the issues in this adversary proceeding.
MR. KING: If you could allow me one more question, your Honor? I'm going to tie it up and move on.
BY MR. KING: Q. Isn't it true, sir, that when you scheduled the Morrell's claim in the bankruptcy as disputed, the schedule did not explain the substance of that dispute? The schedules -
THE COURT: Let me stop you. So what, Mr. King.
MR. KING: Well, your Honor, one of the basis of our case here is that this letter that Mr. Generes is moving on was never delivered, and that he never, in fact, had a valid -
THE COURT: Well, let's deal with the letter, not deal with the confirmation issues which don't have any bearing on the lease or issues raised by the adversary complaint.
MR. KING: Very good, your Honor.
BY MR. KING: Q. You met with Mr. Morrell at the hearing on confirmation to the plan, did you not? A. Yes. Q. You met with him and your attorney, Mr. Brustein, was with you. A. Right. Q. At that time Mr. Brustein advised Mr. Morrell that he would provide him with documentation for your disputed claim; is that true? A. I believe so.
Q. And he discussed the merits of the dispute that you had with Mr. Morrell? A. Yes, he mentioned the holdover tenancy listed on the schedules.
MR. SANDACK: Your Honor, I have to interpose an objection. This is all beyond the scope of direct. It's all, in my mind, irrelevant. I don't know what the point is other than apparently that was the first time the Morrells knew about this controversy. That can be done through their interrogation, not through the interrogation of this witness. I didn't go into it on direct. I think it's burdensome.

THE COURT: Frankly, Mr. King, I don't know where we could possibly be going with this. He testified that he left the notice, and, apparently, your client is going to testify that they never received the notice. If they had received it, the fact that they didn't understand it would be irrelevant. The fact that they didn't receive it, the fact that they don't understand it at confirmation is irrelevant. I just don't understand where we're going, what possible relevance this could have.
MR. KING: I've really completed this line of questioning. We think it's relevant because it's evidence, perhaps not conclusive, that they were never given such a letter or advised of the substance of the claim. But I am willing to go on. Perhaps we could have sort of a sidebar with the Court without approaching?
THE COURT: Yes, sir.
MR. KING: I want to go into an area now, your Honor, that clearly exceeds the scope of direct examination. And for purposes of the kind of resources and time, I'm willing to do it now if there is no objection from the plaintiff, or I can reserve this for my Case in Chief.
THE COURT: Let's do it now. MR. SANDACK: I have no objection, Judge. That's fine.
BY MR. KING: Q. Mr. Generes, you understand that my clients' intention is that you never in fact delivered this July 1st, 1991 letter; isn't that true? A. No, I think their contentions say that they didn't receive it. I think they said in the pleadings that they don't deny that I delivered it. Q. The $8,000 worth of damage claims that you brought against the Morrells when you brought this claim, you've dismissed those claims, haven't you? A. Yes, I did. Q. You dismissed them within the last two weeks; isn't that true? A. Yes, I did. Q. This is a copy of the residential lease. I believe you saw this earlier. It's Plaintiff's Exhibit l; isn't that correct? A. That's correct. Q. Now, as I understand it, sir, the damage claims that you originally made were brought under Paragraph 4 of the preprinted form leases, Page 1 of this document; isn't that true? A. Either that or common law. It's the same. Q. But in any event, your claim was the damage that occurred at the property was over and above the ordinary wear and tear; isn't that true? A. Yes. Q. And that these damages that you brought against them were brought because of their negligence or misuse of the property; is that true? A. Yes. Q. And in the course of making their inspection I take it you made an effort to distinguish between ordinary wear and tear and items of misuse; isn't that true? A. Yes. Q. One of the items you made a claim for, as I understand it -and I won't test your memory here. Let me show you Defendant's Exhibit

L. This was a document that's actually attached to the complaint that you filed in this proceeding and it still bears the sticker of Exhibit C.
MR. SANDACK: Your Honor, there's two objections I'd like to interpose at this time. First of all, Mr. King has acknowledged that the property damage claim has been dismissed with prejudice. Where the relevancy of this fits in concerning whether there's a holdover lease or a two-month extension, is wholly irrelevant. Two, I did object to this on the grounds of relevancy during my objections that I tendered to the Court to the exhibits. I just don't see where this has any bearing or helps the Court render a decision on whether holdover tenancy existed or didn't exist. In fact, it doesn't do anything. All it does is create new issues that are completely ancillary that we're not asking this Court to make a decision on.
MR. KING: May I respond, your Honor?
THE COURT: Yes, sir.
MR. KING: Notwithstanding the witness' understanding of our complaint or our answer to his complaint, it's our contention, your Honor, that this July 1st letter was a complete fabrication. We would like to go into the damage claims that were filed contemporaneously with the back-rent claim in an attempt to show a pattern of conduct of making extraordinary and baseless claims. Because that is exactly what we think the only remaining claim in this case is, and it's highly relevant to this witness' state of mind, this witness' intention in filing this adversary proceeding. And, in fact, the veracity of this witness in the claims that he's made against my client. It's our contention that these – the dismissal of these damage claims with prejudice on the eve of this trial was a thinly veiled attempt to, essentially, keep the Court from having this brought to its attention.
MR. SANDACK: Your Honor, if I may respond to that?
THE COURT: Yes, sir.
MR. SANDACK: I'm a little upset by that characterization. There was no intent by me or any member of my firm to thinly veil anything from this Court. I'm a little annoyed by that suggestion, and I don't think it's right. There's no basis for foundation for that comment. Secondly, your Honor, he's attempting to bring in character evidence which is completely irrelevant here. This isn't a showing of foundation or any habit. All it is is character evidence he's trying to bring in. It's not relevant. It doesn't help to support one bit in rendering a decision that this Court is being asked to render.
MR. KING: We believe this man committed a fraud against our clients and a fraud in front of this Court and that these
THE COURT: This isn't an action of fraud against the debtor.

MR. KING: We're not making a claim for damages of fraud, your Honor. That's our defense. It's our theory of the case that this is a completely and utterly fraudulent claim. If the Court indulges us, your Honor, there is a number of items listed on this exhibit, and I have no intention of going through every one. I simply want to deal with two items here. I believe I can do it quite expeditiously.
THE COURT: Which of the Federal Rules of evidence do you proffer this evidence?
MR. KING: Could we have a short recess while I look?
THE COURT: Yes. that's fine. We'll take a five minute.
MR. King: Your Honor, I call the Court's attention to three separate rules. Rule 608(b) permits inquiry of specific instances of the conduct of a witness for the purpose of attacking or supporting the witness' credibility. I'm parsing out the applicable portions of the rule. "It may be allowed in the discretion of the Court in probative of truthfulness or untruthfulness. It can be inquired into on cross examination of the witness," which is where we are now. I refer also to the notes of the Advisory Commission of the rule which appears on the following page here. I'll read it all, the good and bad for us. "Effective cross examination demands that some allowance be made for going into matters of this kind," talking about non criminal but still questionable conduct. "The possibilities of abuse are substantial. Consequently, safeguards are erected in the form of specific requirements that the instances inquired into be probative of truthfulness or its opposite and not remote in time." These instances that we're going into occurred less than a year ago, and we believe they're highly probative of truthfulness because the claims of damages that were made are so outlandish, they indicate a substantial overreaching. I think the evidence will definitely support that. I'd also call the Court's attention to Rule 405(b) which says, "In cases in which character or a trade of character of a person is an essential element of a charged claim or defense," which is what we have here, "proof may also be made in specific instances of that person's conduct," which, again, is exactly what we want to go into here, your Honor. And finally, I refer the Court to the textbook definition of relevant evidence in 401. It defines relevant evidence as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action, more probable or less probable than it would be without the evidence. What we want to show, your Honor, is that this man in filing his complaint, the complaint that contains the only charge left to be tried by this Court, not only, essentially, fabricated the charge that's remaining, but a

number of other charges that he has now seen fit to dismiss on the eve of the trial. This dismissal with prejudice, your Honor, did not occur months ago or years ago. It occurred less than two weeks ago. We believe it is highly probative of our theory of this case which is that the Morrells have been subject to an abuse of this court, not your Honor, obviously. But the plaintiff in filing this complaint has brought the power of the Court against the defendants in an effort, essentially, to extort some sort of settlement from them and retain money to which he is not entitled.
THE COURT: I'm going to overrule the objection and allow the testimony. But I caution you, let's keep this limited. We're not going to get involved in a meandering trip down a side street in this case and try a case that's not in front of us. I'm going to hold you very narrowly to a limited examination on these issues. We're not going to spend the rest of the day on this issue.
MR. KING: Thank you, your Honor. I'll try to be brief.
BY MR. KING: Q. Sir, Defendant's Exhibit L, which I just handed to you, this is the list that you prepared and that was attached to the adversary complaint that was filed in this action, correct? A. Yes.
Q. As I understand it, you wrote this list in September of 1992 from the notes that you had made when you inspected the property shortly after the Morrells had left; is that correct? A. Correct. Q. On Exhibit L you'll note that you're charging the Morrells $1,800 for one dead 16 foot fur tree due to failure to water. Do you see that, sir? In fact, isn't it true that you don't know why this tree died, do you? A. I believe it thrived for years and years and years. We had an extreme dry spell during August, and then it turned sheet white. It died from lack of water. Q. Again, sir, I didn't ask you about your belief. I'm asking you what you know as a fact? In fact, you never had the tree examined after it died, did you? A. No.
Q. You never had anyone who was a professional in these things because there was a failure to water, right? A. Right. Q. The Morrells lived in the property for eight months, correct? A. Yes. Q. Starting in December of 1990, right? A. Right. Q. So you're not suggesting that they should water this tree in December of 1990, are you? A. No. Q. In fact, you just mentioned an extreme dry spell in August, And we had – at that period of time the beginning of August was dry. Q. In fact, sir, isn't it true that the Morrells were only in the property for approximately two months during the summer of 1991? That's true, isn't it? A. Well, of course. Q. And your claim, without any further knowledge or expertise on this is the tree died because they didn't water it for those two months? A. That's right. Q. Now you were, as I understand it, living next door and occasionally went over

and turned the water on at the property; isn't that right? A. Occasionally. Q. Did you water this tree, sir?

A. No, I didn't. Q. You never advised the Morrells to water it either, did you? A. No, I didn't. Q. You don't even know for certain as you sit here today that the Morrells didn't water it, do you? A. No, I don't.

Q. So as I understand it from your testimony, you can't really be certain that the Morrells were responsible for the death of this tree, can you? A. I can't be totally certain, yes. Q. And yet based on the evidence that we've just talked about, you were willing to file a complaint against them charging them $1,800 for the death of this tree; is that true? A. That's not all of the evidence.

Q. Well, what other evidence do you have, sir? A. I talked to Chalet nursery. The man in the landscape division apprised me of what the cost to replace this tree was, and this is substantially less than what it would take to replace the tree. He said it is common for them to die from lack of water. And the other thing about it is to get in and out, because of the way that property is landscaped, it's going to be a very time consuming job for the people to go in and get it out. This price here is just the cost of the tree. And, actually, the cost, when you add all the labor to it, the price would be much more than $1,800.

MR. KING: Your Honor, I just have one more thing to do in this line of questioning about the tree and then I want to talk about one other item here. What I'd like to do is read from Mr. Generes' deposition on Page 57. If I can approach, I'll give you a copy, your Honor. I'm reading this as an admission, but not as an issue of impeachment. Page 57 Lines 10 through 14 – excuse me, 10 through 18. And, again, your Honor, not as impeachment, but as an admission. May I proceed?

THE COURT: Yes, sir.

BY MR. KING: Q. At your deposition, sir, you were under oath, were you not? A. Yes. Q. Just as you are here today? A. Right. Q. This is what you said at your deposition: "Question: You list here quite a substantial charge for the tree. How did you come to the conclusion that the Morrells were responsible for the death of this tree? Answer: It was alive before they came onto the property, and it was dead when they left." Question: And that is, basically, for whatever reason, you feel then that they are responsible for replacing it? Answer: Yes. " Q. That's the basis of your claim about the tree, sir, isn't it? That it was alive when they came, and it was dead when they left? A. In addition to what I said, yes.

Q. Now, if you'd look also at Exhibit L, Defendant's Exhibit L. The next to the last entry there is an entry for the replacement of a bath vent. It's almost a $500 entry, isn't it sir? Yes. As I understand it, you replaced this bath vent because the fan motor was noisy and wasn't drawing air properly out of the bathroom; isn't that correct? A. Yes. the time the Morrells left the property, wasn't it? A. Yes. Q. Now, at your deposition when I first asked you about this you said that you didn't have any reason to believe that the Morrells had abused the fan; isn't that true? Q. Let me read it to you. This is Page 69 of the deposition and beginning at Line 19 going to Page 70, Line 4. Oh, I'm sorry. I misread my notes here. It's Page 69 Line 19 to 21. At your deposition, sir, under oath you said as follows: "Question: Do you have any reason to believe that the Morrells had abused this vent or had caused this problem? Answer: No." That's the testimony you gave at your deposition. A. The record stands for itself. Q. You didn't correct the deposition, that testimony of your deposition, did you? A. No, I didn't. Q. After you had given that testimony we discussed Paragraph 4 of the lease form, which, I believe, is still in front of you. It's in your hand, is it not? A. Yes, it is. Q. That's the section that deals with the repair obligations of the tenant; is that correct? Not all of it. It's one of the sections. That's one of the sections? It's one of the sections. And in the terms of the lease – you don't have to testify to it, but it says, "Ordinary wear and tear items are accepted," isn't that true? A. Except for the lease rider of Paragraph 1 says, "Tenant shall return these specific items that are listed here in cleaning, normal working condition and will regularly maintain them properly." Q. When confronted with Paragraph 4 of the lease form, you changed your testimony at your deposition, sir. You said, did you not, that the Morrells had abused this bath fan; isn't that true? A. I think that I said based on the evidence that excessive moisture in causing the tiles on the tub wall to fall down. That they probably left the fan on an excessive amount of time. Q. In fact, after saying that you had no reason to think that they abused the fan, you testified as follows. And with the Court's indulgence, I'll read Page 71, Lines 7 through 18.

MR. SANDACK: Your Honor, I haven't objected to this. None of this stuff is impeaching. I mean, I don't know what the purpose of this is.

MR. KING: This is an admission of the party, your Honor.

MR. SANDACK: Judge, this whole line of interrogation discussed – Mr. King promised a pattern of fraud. "This is going to have probative value to the Court in the underlying claim that we're here to discuss and have a

judgment rendered on. This is doing nothing, your Honor. I just want the record to reflect a continued objection to this line of questioning.
THE COURT: Based on Mr. King's promise to keep it brief, I'm going to overrule the objection. This is not a hearing under Rule 11. If this were a hearing under Rule 11 in trying to show that there was no reasonable basis for making allegations, that's one thing. **But as I understand your defense it is that the debtor has engaged in a pattern of fraud. And from what I've heard so far, this falls far short of demonstrating fraud.** The mere fact that there's no reasonable basis for alleging something is very different from fraud, but go ahead.
MR. KING: I promise to be very brief. We're almost done here.
BY MR. KING: Q. At your deposition you said after having said you had no reason to believe that the Morrells had abused the fan, then you testified two pages later as follows: "Question: I want to understand that as best I can. Are you saying that you believe that this thing would not have worn out had the Morrells not lived there? That some other family who had taken better care of it, it would not have worn out? Answer: That's right. Question: And you're basing that on your considered opinion that the cause of this problem was that the fan was left on continuously? Answer: Yes, I think that's the analysis." In fact, sir, you don't know whether that fan was left on continuously while the Morrells were there, do you? A. I just explained that the tiles were falling out of the wall. They had to be falling out of the wall because there was a lot of water. Four kids must have been in there running the shower all the time causing this situation. That's my best conclusion from the evidence I can see. Q. Sir, don't ten year old fan motors wear out? A. Yes, they do. Q. Under normal wear? A. They could, yes, under normal wear. And, in fact, under the contract, if they wear out, they must return it in normal working condition under Paragraph 1 of the lease rider. Q. It's possible, is it not, that the Rittoffs abused this fan if in fact it was abused; isn't that true?
MR. SANDACK: Your Honor, I'm going to object. That's pure speculation. The Rittoffs are not in court here to deny they abused or didn't abuse the fan. Your Honor, this is going way beyond what Mr. King promised us.
MR. KING: Your Honor, this client's claim is pure speculation. That's what I'm trying to illustrate.
THE COURT: I'll overrule the objection. Let's move on.
BY MR. KING: Q. In fact, you don't know whether the Rittoff's abused this fan; isn't that true? A. When they moved in, they didn't state in this lease

that that fan wasn't functioning properly. And furthermore, the Rittoffs were just two people living there, a man and a wife. They were on vacation many parts of the year. So I don't believe that they abused the fan at all. Q. Sir, in fact, as you sit here, putting your beliefs aside, you have no evidence that the Morrells abused this fan, do you? I cited the lease that they signed off on. And it says here that everything was in good working order when they came in. Q. Sir, I'm asking you about an incidence of abuse, not about working order. As you sit here today, you have no evidence that the Morrells abused that fan, correct? This is evidence. Q. That is a lease, sir? A. Some evidence. Q. In fact, sir, reading from the deposition on Page 69, to read the basis upon which you rendered this charge against the Morrells. Beginning at Line 19 and concluding at Line 24. "Question: Do you have any reason to believe that the Morrells abused this fan or caused this problem? Answer: No. Question: Upon what basis do you charge them with its replacement then? Answer: It broke while they were there.

MR. KING: No further questions, your Honor.

MR. SANDACK: Just a few questions, your Honor.

REDIRECT EXAMINATION

BY MR. SANDACK:

Q. Do you recall Exhibit 2 that was entered into evidence? The letter, Plaintiff's Exhibit 2? A. Yes. Q. Did you deliver that letter on July 1 – at or around July 1 to the Morrell's house? A. Yes. Q. Did you put it on the floor? A. Yes. Q. Did you ever receive any written notification or oral notification from the Morrells that they wished to have their tenancy beyond. the expiration date of their lease? A. No.

MR. SANDACK: That's it, your Honor. I have nothing further.

THE COURT: Mr. King?

MR. SANDACK: Your Honor, I'd like to reserve the right to call any witnesses in rebuttal. But for purposes of my Case in Chief, I've concluded.

MR. KING: Your Honor, I'd like to call Jim Sodini to the stand.

MR. JAMES G. SODINI, WITNESS, SWORN.

DIRECT EXAMINATION BY MR. KING:

Q. Mr. Sodini, could you state your name and spell it for the record, please? A. James G. Sodini, S-o-d-i-n-i. Q. Sir, what is your occupation A. I'm a builder and remodeler. Q. And was that your occupation in 1991? Yes . Q. Did you have occasion in 1991 to meet Mr. and Mrs. Morrell.

A. Yes. Q. What was the circumstances in which you first met them? A. Well, the first time I ever talked to Patty Morrell, she called me and she said,

"Hi, I'm Patty Morrell, and in two years I want to reserve you to put a room addition on our house." About six months later I got a call in December, and she said –well, I just got a message on my machine. I just assumed they changed accelerated their program. Well, then I found out that their house burned as a result of the Christmas tree catching on fire. So I went there the next day, and that was actually the first time I had met them was the day after the fire.

Q. Did you at some point come to work for the Morrells? A. Actually, we probably had a very loose agreement in February or the very, very beginning of March. Q. And what were your duties under this agreement? A. It would be to help them restore the fire damage and to construct a new addition. Q. At the time you began working for the Morrells, were you advised of any target date for completing this construction, the remodeling, rebuilding? A. Well, actually, in the very beginning I'm not very quite sure if we spoke really specifically, but I think at one time he asked if we could be finished by June. And at the time I answered the question, we didn't even have plans. We went back and forth and talked about potential starting dates, and once we agreed that if we could get plans by let's say March, by the time we got the building permit, by the time we actually mobilized, under the most ideal situations, three months is just not enough for a job of that magnitude. Q. You were describing the conversations you had with the Morrells. Approximately when did those conversations take place as best you can remember?

A. Well, we began I would have to say February. Because at one time I thought I wouldn't do the job only because I told them there must be some other people with more expertise in fire damage. But once they decided that they were going to do the room addition and expand the size of the house, that's when I became involved.

Q. At some point in the spring of 1991 did you have occasion to talk to Mr. or Mrs. Morrell or both of them about the target date for the completion of the house? A. I'm sure I did, yeah. Q. And can you tell the Court the substance of the conversation? A. Well, I told them – if I remember correctly, I think they wanted to know if they could get in by June, and I told them no. No. 1, we had to got an occupancy permit. In order to get an occupancy permit you have to have, one, a working kitchen. we had the bathroom by the virtue of the fact that they were there all ready. But without a working kitchen, the Village of Northfield would never give us an occupancy permit. I don't remember exactly when, but we didn't even have the kitchen cabinets ordered at that time. I remember talking to Ed a couple

of times about what would be the possibility of – you know, how long, or if I have to extend my lease, you know, how long should I do it for. And I think I asked for – I asked for a couple of months. Q. And based on the schedule that you were working under in the spring of 1991, a two-month extension would take you approximately to what date on the calendar. A. I would say middle of August. Q. Is that what you advised the Morrells of in the spring of 1991? A. Oh, yeah. I mean. I just told them flat out that they couldn't move in in June.

MR. KING: No further questions, your Honor.

CROSS EXAMINATION
BY MR. SANDACK:

Q. Mr. Sodini, when was your first conversation with Mr. and Mrs. Morrell? A. The day after the fire. Q. Did they ask you the day after the fire how long it would take to get the work done? A. No, this was just – this was just, can you please come over and help us because we just had this terrible fire." Q. They wanted you to look at it and render an opinion? A. Right. Q. But they didn't ask you at that time how long it would take to get the work done? A. Oh, no. Q. It wasn't until February when they asked you to do the work and give them an estimate of how long it would take? A. We may have spoken in very, very, very general terms as to what it would take. But I don't think until probably – it could have been January or it may have been February, but I don't think we ever really talked about the magnitude of the job. Q. Until that time? A. Right. Q. And then at that time you had another conversation with one of the Morrells and they asked you again when did you think the completion of the work would be realized? A. I would have to say that we discussed it in probably late February or March. Q. And so late February or early March is when they said –when you said – I don't mean to put words in your mouth, so please tell me if I'm not being accurate. "June doesn't look good. We haven't ordered the cabinets yet. There's no way we're going to get a certificate of occupancy from the Village, so June isn't going to happen? A. Well, I don't think I ever qualified it about the kitchen at that particular time. I just said that I didn't think June was a realistic date. Q. And that was done in February or March? A. Oh, yeah, yeah. Q. Did you know where the Morrells were residing at when you were doing the construction? A. Only because at one time I think I had to go over and talk to them. Q. Did you ever see the written lease with the plaintiff? A. Oh, no, no. Q. Did you ever see a letter dated July 1 from Mr. Generes to the defendants? A. No.

Q. Did you ever do the room addition for the Morrells that they had contemplated doing way back in December before the fire? A. Oh, yeah. They literally rebuilt the entire house. Q. Oh, that was done at one time? A. Oh, yes.

Q. How much were you compensated at that time? a Ballpark? A. $165,000, maybe. Q. $165,000 for all the work?

MR. SANDACK: Thank you very much. I have no further questions, your Honor.

THE COURT: Redirect?

MR. KING: Just one question, your Honor.

REDIRECT EXAMINATION
BY MR. KING:

Q. Are you being paid to appear here today, sir? A. No.

MR. KING: No further questions.

THE COURT: Mr. Sandack?

MR. SANDACK: No, sir.

THE COURT: Thank you very much, Mr. Sodini. Can Mr. Sodini be excused?

MR. SANDACK: Yes, sir.

MR. KING: I'd like to call Ed Morrell to the stand.

MR. EDWARD MORRELL, WITNESS, SWORN
DIRECT EXAMINATION BY MR. KING:

Q. We have your name, Mr. Morrell. Could you spell it for the record? A. Edward Morrell, M-o-r-r-e-l-l. Q. And where do you reside, Mr. Morrell? A. 2324 Clover Lane. Q. And how long have you lived there? A. Seven years. I've owned the house for seven years. Q. I call your attention to December of 1990, what if anything occurred of significance in the Clover Lane house? A. We had a substantial fire in the house that caused us to move out for an extended period.

Q. What caused the fire at your house? A. It was apparently a spark off a candle on the mantel set a wreath that was above it on fire and that started the living room on fire. Q. Were your children in any way involved in the cause of the fire? A. No.

Q. And how many children did you have in 1990? A. Four. Q. And today? A. Four. Q. At some point, sir, did you enter into a lease with the plaintiff in this action? A. Yes, I did. Q. And for what piece of property was

that lease? A. For 1829 Happ Road. Q. And do you recall the duration of the lease? How long it was to last? A. Six months.
Q. And how did the term six months get reached? A. Well, Patty had made initial contact with Mr. Generes and explained our situation that we needed a short lease, a short term lease. I do not know who came up with the initial figure, but his suggestion or proposal was for an eight-month lease at $2,200 per month. I presented that to our insurance adjuster because under the policy they were going to reimburse me for my living expenses during the time that I was out of the house. The insurance adjuster said to me, "Do you think you could make it month-to-month or shorter like six months?" I said, "I don't really know, but I can find out." So I did that. I talked to Tasker, after we had gone in and seen the property, either on the phone or in person and said, "Could we make it six months?" And he said, "Would you be willing to pay more rent for that shorter period?" I said, "I don't think the insurance company will go along with that." He said, "Well, I'll tell you what, if you're willing to give me two months security deposit, I'd be willing to rent it to you for the $2,200 at six months under those terms." And I said, "That will be fine."
Q. And did you ultimately conclude the lease under those terms? A. Yes.
Q. And that lease was a written document, correct? A. Right.
Q. At the time you entered into this lease, had you received an opinion from anyone concerning the length of time it would take to rebuild your house on Clover Lane? A. I think we entered into the lease within three days or so of the fire occurring. The only advice I was taking on the terms of the lease at that time was from the insurance adjuster. I don't believe – I know that Jim had seen the house, and I don't think he had really rendered an opinion. He didn't render an opinion of how long it would take. I don't know if we had other fire restoration people out in that short time period. I don't think we did. Q. In any event you did - A. I think the house was still hot on the third day. I don't think we had gotten to that point. It was just listening to the insurance adjuster.
Q. At some point, in any event, you did enter into a six-month lease with the plaintiff? A. Yes.
Q. Calling your attention to the spring of 1991, did you come to have any discussions with anyone concerning the target date for the completion and restoration of your house on Clover Lane? A. Yes, we had settled in with Jim as our contractor on the project. I had been talking to him at some point in the spring about when it was he thought he could finish. Of course, we were zeroing in first on a start date, but then what I had been asking him on

occasion was how long from the point of starting that he thought he could finish.

Q. And in the spring of 1991, did Mr. Sodini give you an opinion as to how long it would take him for the construction work on your house? A. Yes. And what was his opinion? He thought it might be three to four months. Q. From the date of the compensation? A. From the date of the start, which was, I believe, the very first part of may. Q. Based on that discussion with Mr. Sodini, what if any conversations did you have with your insurance company who was adjusting the loss of the Clover Lane property?

A. Well, to that point we had been under a negotiation with the insurance company over how much the loss would cost to repair. We had several builders that had come in and put together detailed estimates. Because of the lack of commitment from the insurance company, we really couldn't move forward on the project because we were looking to complete several things in the house without knowing what they were going to be reimbursing us. It was really handcuffing our decision making.

Q. I'm not sure I completely understood the answer. Let me try a different way. As I understand it, you're saying in May of 1991, Mr. Sodini told you that he thought it would take approximately three months to rebuild the property?

MR. SANDACK: I'm going to object to the leading nature of the question.

MR. KING: I'm just laying it for

MR. SANDACK: Well, that would be fine if he asked what time frame because the question is preferenced in the spring of 1991. I didn't object because no foundation had been laid. I think now it's a good idea to get a time frame.

THE COURT: I'll sustain the objection.

BY MR. KING: **Q. When was the discussion with Mr. Sodini that you were talking about that you testified about a few moments ago?**

A. It was, I believe, in March. It could have been early April. He had a vacation he was going to take, and we were finalizing the plans and negotiating with the insurance company all at the same time. But we started getting the idea that the original target date to get our house was not going to happen.

Q. And what was the target date to get out of the Happ Road house?

A. The middle of June when the initial lease ran out. That's the commitment had with the insurance company. Q. After this discussion with Mr. Sodini, did you have further discussions with the insurance

company regarding the ability to vacate the Happ Road house by June 1991? A. Yes, I did, many. Q. And with whom did you discuss this? A. Mr. Steve Rapp, who was the adjuster on our account and also his supervisor, her name was Nancy Deprecenzo.(phonetic) Q. And what was the substance of these conversations? What did you say to them and what did they say to you? MR. SANDACK: Judge, I don't mean to interrupt. Can we get a time frame again so I can understand what's going on?
THE COURT: Yes, sir.
BY MR. KING: Q. Approximately when did these discussion with the insurance company occur? A. I guess they would have been in March. The reason is that was the time when we were really running into problems in terms of their commitment, and I was feeling that the whole project was getting pushed back. Q. And were these conversations in person or by telephone? A. By telephone. Q. And was this one conversation or a series of conversations? A. It was several. It was many. Q. Over what period of time did these conversations occur? A. Well, while we were trying to nail down the amount that the insurance company was going to reimburse us, I was reminding them every now and then that we were handcuffed. As we progressed over a few week's time period or maybe a four-week time period or maybe six weeks, I don't really recall, I was bringing that to their attention more because I knew that it was starting to really get in the way.
Q. What was the substance of your position that you presented to the insurance company with respect to the Happ Road property?
A. Well, I told them that because of the lack of commitment from them, I couldn't commit to the scope of the job that I would perform. And as a result of that, it would not — the job was not going to be finished by the end of the six-month lease and I would need some additional time to reimburse living expenses, which was two months. And I asked for two months more. Q. And when did you place that request to the insurance company? I would say it would be the April time frame. And what if any response did you ultimately get from this request to the insurance company?
MR. SANDACK: I'm going to object on hearsay grounds, your Honor.
THE COURT: Mr. King, what's your response to the objection?
MR. KING: Could I have a moment?
THE COURT: Yes, sir
MR. KING: We're not offering this to prove – we're offering this to prove what the insurance company told Mr. Morrell, not whether the insurance company did, in fact, reimburse him for these expenses.

THE COURT: Why isn't what the insurance company told him hearsay?
MR. KING: Because he was part of the conversation.
THE COURT: You're trying to get in the substance of what the insurance company told him. Now, if you're not trying to get it in to establish the truth of what they told him, I don't know why it's admissible.
MR. KING: Well, let me go about it a different way.
THE COURT: All right.
BY MR. KING: Q. Did the insurance company in fact pay you for an additional two-month's worth of living expenses at the Happ Road address?
A. Yes, they did.
Q. Did you have any written correspondence with the insurance company concerning the two month's of additional living expenses that you requested? A. Yes. Q. And what was the nature of that written correspondence, if you recall ? A. I had been unable to get a verbal response to a couple of phone inquiries. It was difficult to get a hold of them. So I faxed a letter that contained a lot of information on it and which also contained a paragraph that asked specifically for some additional time, two month's of time in the house, reimbursement for that rent. Q. Let me show you what's been previously marked as Defendant's Exhibit E for identification. I'd like you to take a look at it and tell me if you recognize it?
A. Yes.
Q. Can you identify Defendant's Exhibit E for the record?
A. It's a fax that I put together and faxed myself to Nancy dePrecenzo, the supervisor on my account in the loss.
Q. Did you write this document yourself? A. Yes. And did you write it on or about the date it bears, March 9, 1991? A. Yes, I did.
Q. What is the significance of Autotype, which appears at the top of the second page of this exhibit? A. That's the company that I work for.
Q. Did you send this from your place of business?
A. Yes, I did. Q. Is this the communication you were talking about where you asked for some consideration of the payment for additional living expenses? A. Yes. Q. And could you identify for the Court the paragraph you were referring to? A. It's the bottom paragraph of the first page. Do you want me to read it? Q. **At this point, this is -- no, you don't have to read it. It's in the record At this point, March 19, 1991, had you settled on the desire for a two-month living expense reimbursement?**
A. No, it came latter .
MR. KING: Your Honor, I move to admit Defendant's Exhibit E.
MR. SANDACK: I have no objection.

THE COURT: It will be admitted. (Defendant's Exhibit E was admitted.)
BY MR. KING: Q. At some point in the spring of 1991, did you have a conversation with the plaintiff in this case, Mr. concerning the extension of the Happ Road lease? A. Yes, I did.
MR. SANDACK: Your Honor, again, I hate to interject, but can we just get a month?
MR. KING: I'm going to get to it
BY MR. KING: Q. Approximately when did this conversation occur? A. I'd say it was the end of April beginning of May.
Q. And was this a conversation that occurred personally or by telephone?
A. By telephone. Q. And where were you at the time?
A. In my office at Autotype. Q. Who placed the call? A. I did.
Q. And where did you place the call to?
A. To Tasker's home of – I assume his home office. When we signed the lease we were in what appeared to be an office area of his home. I believe the phone number he gave me rang in his home. Q. And in the course of this phone conversation, what did you say to the plaintiff and what did he say to you? A. I told him that it did not look like the house was going to be finished, my construction project would not be finished by the mid-June time frame, that was the end of the lease, and I asked him if we'd be able to stay for two more months. He said that was not a problem. I could do whatever I wanted to and that would be no problem at all. He made some kind of reference like, "Well, you've never rented from me before, but stay as long as you would like." And I said, "Well, I'd like to stay for two more months. And he said, "Well, whatever you'd like is okay." And I reaffirmed the two-month time frame again because he kept – I mean the way he was talking it was like, sure, it's no problem. But I wanted him to know that two months was what I needed, what I got committed from the insurance company, and what I could afford commitment from my builder that I would be in that house in August. Q. In the course of this discussion, did you discuss the rental rate that would apply during to the two months?
A. **Yes, over the course of staying in the house I really came to the conclusion that we were over paying.** So I was hoping that maybe we could reduce the rent by a little bit. I said to him, you know, "What about the rent?" And he said, "Well, we won't increase it. We'll just leave it where it is." And I sort of gave up mentally on the idea of negotiating. I just didn't think it was worth doing. I just accepted the 2,200.
Q. At the time you had this telephone conversation with the plaintiff, had you received a commitment from your insurance company to pay for two

additional months of living expenses? A. I'm almost certain that I had. I **mean, I guess I'd have a little bit of a problem saying absolutely for sure.** The way it tracks back through the papers I have, I believe I had that commitment.

Q. Did you receive any correspondence from the plaintiff on or about the first of July of 1991? A. No. Q. Let me show you what's previously been marked as Defendant's Exhibit G. Will you take a look at it and tell me the first time you recall seeing that document? A. The first time I saw a copy of this was when I had received papers on the action against me that we're discussing today. Q. Did the plaintiff at any time prior to the filing of this complaint advise you or suggest to you that the lease on the rental property had been extended for one year as contemplated on Defendant's Exhibit G? A. Absolutely not. I would have been in no position to accept that kind of directive or proposal. What do you mean by that? Well, we knew we would be out of the house in two months, and we were really scrapping the bottom in terms of our financial situation. We were putting on an addition to the house, and we were constantly in a debate mode with the insurance company attempting to have them keep up the inflow of money with the outflow of money. With insurance reimbursement in fixing a home, the money does not come from the insurance company to the homeowner. It goes from the insurance company in stages as completion levels come about to the mortgage holder. When the mortgage holder decides that the completion levels are at their satisfaction, then they reimburse the homeowner in chunks so they're covered in case the homeowners decided to abscond the money and not do any repairs and they're left with a property that's worthless. Q. To the extent of your knowledge did – well, when did you leave the Happ Road rental property? A. It was – we actually moved out most of our furniture and belongings, I believe, it was early in the second week of August. Patty had put together a commitment from a moving company that came in and moved everything out. They left a few things so that Patty and the kids could adequately sleep there for a couple more days, and then they went on vacation up to our cottage. Q. In or around August of 1991, did you have occasion to discuss your security deposit with the plaintiff?

A. I did. I called him from our Green Lake cottage after we were completely vacated from the premises to find out where my security deposit was. We had attempted to leave the premises in very good condition, and we had somebody picking up our mail and it hadn't come yet and I was wondering where it was. I also wanted to make sure that Tasker had had a

chance to go into the house and see that there was no problems. Q. In the course of this conversation, what if any response did the plaintiff give to your inquiries? A. Well, while we were on the phone I asked him if everything was okay, and he had said that it pretty much looked okay. He mentioned that there was a little bit of damage to one of the walls which he figured a painter could fix, but he wasn't sure would be referencing that maybe one of the kids hit it with a tricycle or something like that. I said, "So everything else was okay? There wasn't any other problems?" He said, "No." Without me directly saying where is my security deposit, he said, "Oh, are you referring to the security deposit? Is that what you're asking me about?" I said, "Yes. I would like to know about that." And he said, "Well, didn't you get the paper work on my bankruptcy?" I said, "No, I don't know anything about that." He said, "Well, I filed bankruptcy and you should have gotten that paper work." He mentioned that he sent it to Happ Road. And I said, "Well, that's probably why I haven't gotten it then. What does that mean?" And he said, "Well, it's not going to be a problem for you because I've got enough money." But this situation with whatever judgment that was found against him, he had to do some reorganization, but it would just be a matter of a few months and then I would get my security deposit. Q. Did the plaintiff at any time indicate that your tenancy on the property had been held over and extended for a year? Absolutely not. Did the plaintiff at any time in that conversation indicate that the property had suffered substantial physical damage?

A. No, just what I mentioned was the only thing. Oh, I'm sorry. He also mentioned that he saw that I had replaced a couple of tiles in the bathroom, and I acknowledged that **because I felt bad that these tiles -- there was a couple of tiles that had fallen and I replaced them.**

Q. Did you have any further conversations with the plaintiff concerning your security deposit through the spring of 1992? A. No, I didn't. I said, "Should I be talking to your attorneys?" And he said, "Yes." He gave me the name. From that point, I had regular correspondence, conversations with his attorneys, one of his attorneys, on the status of the case and the time when I would be reimbursed for my security deposit.

Q. Did you keep in contact with the plaintiff's attorneys on this matter? A. Yes. Q. And how often did you contact them? A. Well, it probably averaged once a month. There were times when I called and then called back a week later. There were other times when 45 or 60 days might have gone by, but it probably averaged monthly. I was very frustrated because I

wasn't getting any information from them on what it was – what the problem was. **And I noticed that in the filing – or in the plans and filings that pertain to the bankruptcy, that there was this disputed or protested designation next to the $4,400 claim.** I didn't understand that so I kept calling and asking them, "What is the disputed amount? I'd like to understand that. Is it $100, is it $200?" Could I know so that at least I'd have an idea of what would be coming my way and what the timing length was. Q. When was the first time you became aware of the nature of the dispute over the claim for the return of your security deposit? A. When I filed the motion in this court that was referred to earlier. I had a very brief meeting with Tasker and one of his attorney, Abe Brustein. I think that was his name. Q. Now during the time that you were at the Happ Road rental, the eight months that you were there, did you or your family do $8,000 worth of damage to the property. A. No, we didn't do any damage to the property. I mean, not anything that was abnormal for a relatively conservative family with four children. **I mean, children are not perfect, but ours are no more wild than the next person's.** As a matter of fact, I took a lot of care to trying to make sure the property was in the same condition when we left. I mean, there were things like – a prime example is that there was a cover on the toilet in one of the bathrooms. It cracked. I don't know how that happened, but we ended up buying one. **Patty spent hours – she went out and bought a brand new toilet that was exactly the same and had to throw the toilet away just to get the cover because they wouldn't sell us the cover alone. It cost us something like $100. We just did it.** The tile fell off, and I figured I didn't know what caused it, but I figured it was just going to cause Tasker a headache, so I put the tile up. It was my nature. There was a door that was broken – there was a closet door that was broken and it was acknowledged as broken when we signed the lease. One night I got motivated and decided to just glue this thing and clamp it. It's going to be okay. And that. As a matter of fact, I mentioned it to him and he thanked me. There may have been one or two other things. We replaced anything that broke. There was nothing wrong with that property when we left.

MR. KING: No further questions, your Honor.

THE COURT: Mr. Sandack?

CROSS EXAMINATION
BY MR. SANDACK:

Q. Mr. Morrell, my name is Ron Sandack. If I ask you a question that you don't understand or you need repeated, please let me know. As I understand it, in December of 1990, you had an accident in your house which caused you to enter into a lease with Mr. Generes, right? A. Yes. Q. Did you ever tell Mr. Generes that one of your children caused the accident, had caused the fire to engulf your house? A. No. Q. In December of 1990, I take it you were looking at more than just the plaintiff's property as a possible renting situation until your home was fixed? A. Yes. Q. Did you look at more than one lease before you signed Plaintiff's Exhibit 1?

A. More than one lease? The only lease or leases that I looked at came from Tasker. I didn't examine any other potential leases or other properties. We weren't interested in any of the other properties that we saw. I don't recall whether there was actually a lease put together with the original eight month $2,200 proposal or that was just done verbally.

Q. Okay. When you received the unsigned version of the lease and Mr. Generes said, "This is something we'd like to discuss," did you take it and consult with an attorney before entering into that lease? A. Yes, I did.

Q. You had an attorney look it over? A . Yes.

Q. Why did you do that? A. Well, it was like a $2,200 commitment, and we also had a substantial level of rider items listed. I just wanted to make sure that I wasn't doing something that I didn't technically understand.

Q. Well, I'll ask you a question about the rider in a minute. But essentially, wasn't it true that before you signed into a legal contract with Mr. Generes, you wanted to make sure that you were protected? There wasn't anything in there that was onerous. This was rather a standard form and that you were being protected by signing that. Isn't that why you saw attorney?

Q. And you were protecting yourself and your family? A. Yeah, the insurance company was not going to take any responsibility for the terms of the lease. They were simply going to reimburse the monthly cost. The responsibility of the lease was with me.

Q. As far as the rider goes, did you make any revisions to the rider Any requested changes on that document? A. You know, I really don't remember. I know that Tasker testified earlier about the dog. I remember that he did put that onto the rider and it said that we had a small dog and that there were no other pets allowed but that one was.

Q. Well, that was at your request? He didn't know you had a dog, right? A. Well, it could have been Patty. I don't know. Q. Well,

either you or your wife said, "We have a dog and the lease provides for no animals. Can we put in an exception for our poodle?" A. That's correct.

Q. Okay. In February of 1991, was there a problem with the garage door at the Happ rental property? A. Yes.

Q. Did the door come out of the track, one of the rollers come off. A. Yeah, it wouldn't operate. It fell off on one side.

Q. And you got it repaired, didn't you? A. Yes.

Q. You paid about $194, didn't you, to get it fixed? Q. And you felt that was Mr. Generes' responsibility under the lease, didn't you? A. I did.

Q. And you were so staunch in your opinion that you typed up a letter and dropped it off to him saying, "Hey, you should pay this, not me," in sum and substance, correct?

A. I believe that Patty had mentioned it to him, and he made reference to the garage door opener being our responsibility. I didn't understand that, and I read through the lease and it stated that the garage door opener was on the rider. But the problem was not the garage door opener. It was the garage door. So I figured I'd put a note together. I don't write very well, so I typed it on the computer and I dropped it by Tasker.

Q. The bottom line, Mr. Morrell, you typed up a letter and dropped it off with him saying, "You should pay for this, not me," Correct? A. I asked him for consideration on it because I didn't feel it was our responsibility.

Q. But it was so important to you that you typed up a letter, right?

A. It was worth typing a letter.

Q. Okay. But in February or March or May or April or whatever month it is that you supposedly had a telephone conversation with Mr. Generes about an oral extension to the lease, it wasn't important enough for you to type up a letter saying, "Dear Tasker, this letter will confirm our telephone conversation"? You didn't do that, did you?

A. I wish I had.

Q. You didn't though, did you?

MR. KING: Objection, your Honor, argumentative.

THE COURT: Overruled.

THE WITNESS: I did not write any letter.

BY MR. SANDACK:

Q. Did you consult with an attorney at this important juncture and say, "I want to extend my lease. What do you think?" A. No.

Q. You didn't consult with an attorney, you didn't write a confirming memo or letter on your supposed conversation in the spring, some month of 1991, about an extension of your lease, correct?

A. That's correct.

Q. So how did you make payments of monthly rent from December through August? A. My wife pays the bills. They were by check.

Q. But you dropped them off, right? You didn't stick them in the mail?

A. I don't know that. Q. You don't know that? A. I have absolutely no idea. My wife takes care of the bills. Q. She didn't tell you? A. She never said how she was delivering these payments? If she did, I don't recollect it. I mean, she might have. A. In July of 1991, other than you and your wife you have four children at home, correct? A. Yes, sir.

Q. You had two employees at the house during the summer of 1991, a housekeeper and a cleaner or a cleaning lady? A. We had a cleaning service that Patty had employed that sent in somebody, I think, once a week. Q. How many days a week did you have someone besides your wife and children at your home? Pretty much I would say five to six. Q. Out of seven? A. Right. Q. So on July 1, there were at least five people in the house, right? A. On July 1, there were five people in the house? Q. At least we know that. A. There is no way I can confirm or dispute that. I mean they could have been off on an outing all day long. They could have been in the house. Some could have been there. Some could have I don't know.

Q. **But when you left the house and your family left the house, you didn't leave the door unlocked or unopened, did you? That wasn't a practice of yours, was it?**

A. We didn't routinely use the front door of the house. Generally, we used the garage entrance, but it's not impossible. I mean, the kids could have taken a walk down the block --And what, left the door opened? It's possible.

MR. SANDACK: Your Honor, I have no further questions of this witness.

THE COURT: Mr. King?

MR. KING: Just a couple of very quick questions, your Honor.

REDIRECT EXAMINATION

BY MR. KING:

Q. You testified concerning a phone conversation with the plaintiff regarding the extended lease at the Happ Road property? A. Yes. Q. In the course of that conversation did the plaintiff agree to extend the lease on the property? A. Yes, he did. He said that I could stay two more months and

continue to pay the $2,200. You know, around about that time I had a lot of concern whether or not we were going to be able to stay because I had a family to worry about in the house, and I needed to get a commitment as to where we were going to live. If Tasker was going to be unwilling to commit two more months, I would have had to make alternative plans, which would have been to rent something else or live with relatives for a couple of months. But I had to be sure. I couldn't afford to have my family hanging and all of a sudden – We don't rent property as a routine. What I did understand is that my lease expired on mid-June, at mid-June, and if Tasker was on top of things he might have been looking for me to get out. He was contemplating selling the house. **He had put a for sale sign up. I knew he was under financial pressure, so I needed to make sure that I had a commitment with him and he gave it to me.**

Q. How did you know he was under financial pressure? A. He told me.

MR. KING: No further questions, your Honor.

MR. SANDACK: I just have one further question.

RECROSS EXAMINATION
BY MR. SANDACK:

Q. I'm going to use your words. You said you had to be sure that you were going to get this extension. You couldn't afford to leave your family hanging and you needed a commitment out of Tasker for a two-month extension. Those are your words, correct? A. Correct. Q. But you didn't write a letter? You didn't write a note? You didn't follow up in any way, shape, or form in writing to get your commitment to memorialize your agreement at all, did you? A. No.

MR. SANDACK: No further questions, thank you.

MR. KING: My last witness, your Honor, is Mrs. Morrell.

DIRECT - MRS. MORRELL:
BY MR. KING

Q. Could you spell your name for the _ A. Patricia Anne with an E, A-n-n-e, Morrell, M-o-r-r-e-l-l.

Q. Calling your attention to December of 1990, did your principal residence suffer damage by fire? A. Yes, it did.

Q. And what caused that fire? A. I actually was in the room when it started. A candle flick started a wreath on fire and the tree caught right away.

Q. Did your house suffer substantial damage as a result of this fire? A. Yes, it did. I was having a party for the children, so I had seven children and a baby upstairs asleep and my husband had gone out with another one of our children. So I got the kids all out of the house, and by the time that happened, the house was ravaged with fire. We actually, the baby and I, walked through flames to get out of the house. Q. After your principal residence was damaged by fire, did you at some time after that come to meet the plaintiff in this case, Mr. Generes? A. Yes. Although, I had met his wife at church before and knew her Q. What was the circumstances in which you met Mr. Generes in December of 1990? A. Well, I had gone up and down Happ Road to get back to my house. It was a road that I used a lot. I seen the for rent sign, and I wrote that number down. At the same time a lady from the church came and said, "Dorothy's house is for rent. Here's the number, call." And Ed had circled all the possible rentals that looked good and, you know, it was the same. We had three numbers that were all the same. So we called him along with several other people. Q. You made a reference to Dorothy. To who do you refer? A. Dorothy is Tasker's wife. Q. During the course of your meetings with the plaintiff in December of 1990, did you have occasion to tell him what caused the fire at your home? A. No. I think I said there was a fire. I don't know if I said anything other than that. Q. At some point in December of 1990, did you or your husband enter into a written lease to rent the Happ Road house from the plaintiff? A. Yes, we did. Q. What was the duration of the tenancy in that written lease that you had executed? A. It went from mid-December – I don't know the exact date –to mid-June. I don't know the exact dates. Q. At some point between mid-December and mid-June, mid-December of 1990, mid-June of 1991, did you come to a conclusion about whether you wanted to leave the Happ Road rental property at the end of the lease term? A. I was very nervous. We had been through a lot emotionally. I was very concerned about where we were going to stay. We were constantly, you know asking our builder – trying to figure out where we were going to go, if we were going to be able to get in in June, what was going to happen. Dorothy had come over and said that they were having trouble, financial trouble. She didn't know what was going to happen The house was for sale and a couple of people had come through. I was concerned that the house was going to be – you know, I blew it out of proportion. I thought the house would be sold and we would be somehow out on the street. So we really started pursuing our insurance company and they did in fact okay the two extra months. And I called Tasker eventually and just said, you know — Q.

Excuse me. Before you get into that, you started to describe a phone conversation with the plaintiff? A. Yes. Q. When did that phone conversation take place? A. I believe that was either in late April or early May. I'm not sure of the time exactly. It might have been May. Q. Where were you? A. I was in the bedroom on the Happ Road rental house on the telephone. Q. And who placed the call? A. I did, Q. And to what location did you call to reach the plaintiff? A. The number that I had – that my husband had given me – he frequently called Tasker and that, I believe, connected to his home next door. Q. Your husband testified to a phone conversation in that same general time frame. In relation to your husband's conversation what was your conversation with the plaintiff? A. Mine was initial. And then I called him at work and I said, - – . "You need to follow up." And I was very adamant about it. I had hoped it was that day. Q. Who did you call at work to follow up on? A. My husband. Q. So your conversation occurred before your husband's? A. Right. I didn't discuss money or specifics. I just wanted to see if it was possible. Q. In the course of this telephone conversation, what did you say to the plaintiff and what did the plaintiff say in response to you? A. I said it looks like, you know, we may need a month or two, probably two, and would it be possible for us to stay. And he said, "Sure." I said that I'd have Ed call him. " **We just want to make sure we- have-the verification from the insurance company, but he'll call and discuss it with you.** And he said that would be fine. Q. How did you come to determine that you needed or wanted to stay an additional two months at the property at that time? A. Because I knew I was leaving for the lake, and I think it would have been an easier transition for the kids. I was just thinking of the kids. It thought it would be an easy transition for them to go right on vacation, and, you know, not have to move once or twice or in with relatives or in with friends or maybe even split us up. You know, I just didn't know. There was a lot going on at the time too with the insurance company and paper work. Q. At or about the time that you had this phone conversation with the plaintiff, did you have reason to believe that your Clover Lane property, your principal residence, was going to be ready for occupancy in the middle of August of 1991? A. My builder said that he would have it ready for us when we came home from vacation. Q. And when were you scheduled to come home from vacation? A. The third week in August because my children started school the following week. Q. Did you at any time receive any written correspondence from the plaintiff in or about July of 1991 concerning an extension of your lease term for a one-year period? A. No, I did not. Q. You heard the plaintiff's

testimony of how he allegedly delivered this notice to the Happ Road rental property, correct? A. Yes. Q. Had the plaintiff delivered the letter in the manner he stated, would you have seen that letter?
MR. SANDACK: I'm going to object. That's pure speculation.
THE COURT: Sustained.
BY MR. KING: Q. Did you in fact see a letter in the front entrance of your house on or about the lst of July 1991? A. No, I didn't. Q. You had people who worked for you at the house, a housekeeper and a cleaning lady; is that true? A. Yes, it is. I was at the other house working part of the time, going back and forth. And, also, I did all my work in the – when you first walked in the house it was like – I don't know what it was. It was like a living room, dining room type of thing and I had all my work there. **And, in fact, many people dropped things off and put it on the desk.** My children knew they were not allowed to disturb that area at all. I had a housekeeper and at one time a summer girl that just helped the kids play and keep busy so the house wouldn't be taken over by the children. Q. Did either of those two people who worked for you ever indicate to you that they'd seen a letter delivered like the one that the plaintiff testified about?
MR. SANDACK: Objection. That's, again, pure hearsay.
THE COURT: I'll overrule the objection.
THE WITNESS: No, not to deliver a letter. He had come in a couple of times showing people the house, and they did tell me about that. And then the washing machine had broken and he was trying to fix it and make arrangements for that. I told them who he was and, you know, to let him in and ascertain whatever information he needed.
BY MR. KING: Q. Just for the purpose of clarity, the he you were referring to is? A. Tasker Generes, yes. Q. Did you ever have any conversation either personally or by telephone in which the plaintiff indicated to you that the lease the property had been extended for a year? A. No, I did not. Q. Did you ever have any phone conversation or person-to-person conversation which the plaintiff indicated to you that you owed rent on the property for any period after you left the property? A. No. Q. When did you ultimately leave the Happ Road rental property? A. I made arrangements to move the bulk of our belongings out to my Clover Lane address early in August, I don't know the exact date, with a local moving company. And I just left a few things behind that I knew I would use going to the lake so I could live in the house a day or two before we left. Q. On or about that time did you have occasion to have any conversations with the plaintiff regarding the Happ Road rental property? A. As I was leaving – I had the kids in the car

and I did give him the key and the garage door opener and said that we were leaving and that I had the house clean. Ed was going to move -- there was a mattress left, and he'd be moving that out that evening or the next morning and he would talk to him about the specifics. I said, "Did you see anything wrong with the house in regards to the security deposit?" And he said, "No. There might be a little dent in the wall and **the tree looked a little dry**," but other than that, that was it. He said, "I'll mail you the security deposit." Q. Now, did you have any earlier conversations with the plaintiff? Person-to-person conversations after that? A. In September after we came home from vacation, some wallpaper had been sent. My decorator had my old address and they sent the wallpaper to that address. I called him and asked him if he did in fact have the wallpaper. He said that yes, he did. He was at 1829. He was in the house, and I said, "Thank you very much for keeping that for me. And he handed it to me and said good bye. Q. In the course of that interchange in September of 1991, did the plaintiff at any time mention that you were delinquent in rent? A. No. Q. Did the plaintiff at any time mention any sort of obligation in that conversation to pay rent? A. No. He was very nice to me and handed me my wallpaper. Q. Did the plaintiff at any time in that conversation mention any substantial damage that he felt you caused to the property? A. No. Q. After you left the Happ Road rental property, to your personal knowledge, did your husband have conversations with Mr. Generes? A. Yes, he did. I'm not sure about the exact date, but I know that he said he was going to call. You know, we were trying to figure out how the money was going to go and what the insurance company had promised and whatever it was and all the walk throughs that had to be done in order for the mortgage company to release our money. I was a little pushy about it and I wanted him to call and find out so we could plan better. And I was in the room with him when he called the first time, but not the second time. When you were in the room, did you hear your husband's part of the conversation? Yes, I did. Can you account for the Court what your husband said?

MR. SANDACK: I'll object, your Honor. His side of the story has been echoed. This is just piling on.

THE COURT: I'll overrule the objection.

MR. KING: You may answer the question.

THE WITNESS: To the best of my knowledge, I remember him asking in general terms about the condition of the house, if it looked good to him. And then they were talking about a drywall patch. He was going back and forth about the cost, and he decided he didn't really know what it would cost

but to let him know. But did everything look okay to him? And finally he said to him something like, "Yes, I will bring the security deposit." And then my husband's whole face changed. And I was like what, what did he say? And then he didn't say anything to me and then I heard my husband tell him that he was sorry, that it must have been really hard, that the situation he was in must be difficult and **that he understood and that he would contact the attorney that Mr. Generes had said to do and then they hung up.**
Q. During the time you were at the Happ Road rental property, what was the financial situation of your family? A. We used – initially, even for the contents so the children had clothes and a Christmas tree and all the things you need to live – we walked out of the house with absolutely nothing. We went out and used our own money. And we really weren't reimbursed probably until March for everything that we had bought. It was tight. It was very tight. We did have to use — of our own money. We had to be very careful about what we spent and how we spent it and what we committed to. Q. When, if you can recall, did the insurance company finally complete its reimbursement to you of the fire damage at your house? A. Well, they stage it in four different areas: The contents, the structure and that sort of thing. The structure, they just give all to the mortgage company and the mortgage company decides when they're going to give that back to you and then they release checks based on - Q. If I could just interrupt you. Maybe I can short circuit this. When, if you can recall, did you personally, Patty Morrell, receive the last reimbursement from the insurance company on the Clover Lane property? A. January or February of 19 – the year after the fire. I'm terrible with dates. January of '92, I believe, or February of '92. When you left the Happ Road rental property, did you examine the property after your furniture had been moved out? A. Very much, yes. I'm an immaculate housekeeper. I mean, I don't do it all myself, but I'm very serious. Q. Did your family do $8,000 worth of damage to the Happ Road property? A. No.
MR. KING: No further questions, your Honor.
MR. SANDACK: Mrs. Morrell, I only have a few questions. I'll be brief,

CROSS EXAMINATION
BY MR. SANDACK:

Q. Would you describe to me and the Court the method you employed in paying Mr. Generes for monthly rent when you were in the Happ residence? A. Would you repeat that? Q. How did you pay rent?

A. I write my monthly bills at the same time every month, and it's my practice – I have four kids. We take the Village payment over to the Village, and they get to drop it off. we do a lot of drop off. We do some mailing. We would either drop it off – we would hand it to somebody. **The children and I would walk over there or I would walk them or let them walk by themselves.** To my son, that was a big deal. If nobody answered, we'd put it in the mailbox. Q. So either you or one of your children walked it over? A. Right. Q. And that was done each and every month throughout your renting the property? A. To the best of my recollection, yes.

Q. You mentioned under direct testimony that from time to time you received a lot of things at the Happ residence and if it was delivered, it was delivered to the front door. Is that your testimony? A. Yes.

Q. You never received things at the garage entrance? A. Yes, I did.'

Q. You did? A. There were times when the garage door would be open. If we were working or if I was going in and out all day, I would have the garage door open while I was there, If I knew I was going out in ten minutes. Some people would come to the garage door, but also to the front door and the garage door.

Q. Where was it mostly if you had to quantify it? A. Mostly the front door.

Q. And speaking of the garage door, did you have a conversation with Mr. Generes about the garage door falling off or out of track? A. I did initially and then my husband–I don't know if–I did initially, and then I think **my husband had a discussion with him and then he sent a letter to him and I delivered it to him.** When I got no response, I did call him and ask him what, you know, what was the disposition. You know, what was his feeling on what we had to do communicate to him.

Q. Did you converge with your husband when he was typing up the letter? Did you talk about what the contents of the letter should say? A. No.

Q. Did he show it to you before? A. Yes. Q. And you physically walked it over and put it in the door? A. Or I might have mailed it. I don't know. I don't know. You don't know? A. No. It's my habit to mail most things other than bills.

Q. Did you ever talk to an attorney prior to signing the lease or having your husband sign the lease? A. I believe my husband had an attorney who looked at it. I remember reading the lease carefully because there was a lot there.

Q. When you and your husband discussed your decision with Mr. Generes about extending the lease two months, did you take pen in

hand and write a letter? A. By that time, to be very honest with you, the four kids, the finances – my husband had been
THE COURT: Please, answer the question.
THE WITNESS: No, I didn't.
MR. SANDACK: 1 have no further questions of this
MR. KING: Just one or two questions, your Honor.

REDIRECT EXAMINATION
BY MR. KING:

Q. With respect to the garage door, did you or your family abuse the garage door in any way? A. Not at all. Q. Did you believe that it was your obligation to repair it. A. Not according to the lease, but I was not going to argue. I was not going to press it. It wasn't worth it. Q. Did you in fact pay for it A . Yes. MR. KING: No more questions, your Honor.

RECROSS EXAMINATION
BY MR. SANDACK:

Q. **The issue was important enough to write a letter, right?**
A. As I've indicated, during that particular time, it was very stressful with the kids emotionally, the insurance company, everything.

MR. SANDACK: I have nothing further except for a very brief closing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
BY THE COURT

THE COURT: We'll dispense with the closings. The essential facts in this case up to a point, are undisputed. Sometime in December of 1990 the principal residences of the Morrells' was damaged due to a fire. As a result of the fire they were unable to stay in their home, and they had to move to some type of temporary shelter. After looking at several properties, the Morrells entered into a written six-month lease with the debtor/plaintiff in this case, Tasker Generes.

Now, Let me back up a second. The following shall constitute the Court's findings of fact and conclusions of law with respect to this complaint, and this is a core proceeding because it involves an objection to claim and counter claim. Otherwise, the claim by the debtor against the Morrells could be a related-to matter, a non-core matter. But because of the rights in the context of an objection to claim and counter claim, it's a core matter.

Having entered into this lease dated December 18, 1990 for six months with the debtor/plaintiff, Mr. Generes, the Morrells occupied the premises on Happ Road, the rental property on Happ Road, until mid August of 1991. The lease term expired on June 17, 1991. It became clear in the winter or early spring of 1991 that the repairs and additional construction on the Morrell's home that was damaged by fire would not be completed by the June 17, 1991 date by which their lease expired. The reasons are not in serious dispute. As a result, the Morrells testified that they contacted their insurer and arranged for an extension of the reimbursement terms of the insurance coverage whereby the insurance company would pay them for out-of-pocket expenses including the cost of renting substitute living quarters until the repairs could be made. It was this reimbursement that the Morrells used to pay for the rental of the Happ Road rental property. The Morrells testified that Mr. Morrell contacted Mr. Generes sometime in April or May of 1991 and sought an extension of the lease until August, approximately August 17, 1991. Mr. Generes denies that. Mr. Generes testified that on or about July 1, he sent a notice to – he delivered a notice to the Morrells invoking the provisions of Paragraph 8 of the lease and which provides for a renewal of the lease for one year. According to the lease terms, a rent calculated at double the rent specified in Paragraph 1 of the lease. Mr. Generes indicated in the copy of the letter –the letter purportedly delivered to the Morrells – that the doubling of the rent was waived. The Morrells deny ever receiving that letter. In any event, on or about August 17, 1991, the Morrells vacated the premises, the leased premises, at 1829 Happ Road in Northbrook. At the time they vacated they had paid the rent through the original six-month term and the two additional months in which they occupied the premises. Upon commencement of the lease, there was a security deposit tendered by the Morrells to Mr. Generes in the amount of $4,400. That was a negotiated amount.

The Morrells filed a claim in this estate for the return of the security deposit. Mr. Generes filed an adversary complaint objecting to that claim on a number of grounds, but, in addition, seeking, by way of counter claim, to recover the amounts due for the unexpired period of the lease for the additional year from June 17, 1991, through approximately June 17th, 1992, less the amounts received when the property was rented by Mr. Generes in about May 1992, a rental of $2,000 per month. And, I should add,

parenthetically, that the rent term on the original six-month lease was $2,200.

This case turns on the pure issue of credibility. If I believe Mr. Generes, that the notice was delivered, or, to the extent that the notice was not delivered, that he has elected, pursuant to common law, to treat the occupancy by the Morrells as a holdover situation and treat them as holdover tenants, then he is indeed entitled to what he prays for in his counter claim, at least in his counter claim as amended after dropping the claim for damage to the property.

If I believe the Morrells, that there was an oral extension agreement by which Mr. Generes agreed to extend the original six-month term of the lease for an additional two months for the same rental, then Mr. Generes, of course, is not entitled to that additional sum and they are entitled to the return of the security deposit.

I have listened to all of the witnesses and I have observed their demeanor in court. I will find that in fact, there was an agreement between Mr. Generes and the Morrells whereby the original period of the lease was extended for two months and two months only. That the notice was not delivered to the Morrells on July 1. The placing of the notice on the floor in the house is not delivery of the notice, and nor was the intent to treat them as holdover tenants in any way communicated to the Morrells during the periods at issue. That's up through and including June of 1992. The Morrells' testimony makes it clear. I believe Mr. Generes understood that the Morrells were only interested in renting until such time as their home was repaired.

Given that their failure to respond to the alleged notice of July 1, 1991, would seem to raise a real issue to Mr. Generes as to what was going on. He understood that they didn't intent to live in this property forever, and they certainly understood that. I just cannot understand why he assumed that their failure to respond to this alleged notice was an agreement on their part or acknowledgment on their part of his right to treat them as a holdover tenant. That's simply inconsistent with all of the circumstances of the case, and I just don't think that the delivery of the notice was reasonable under the circumstances. Nor, in fact, do I believe the notice was delivered at all or prepared at all.

So for those reasons I will deny the objection to claim. The Morrells will be allowed – the counter claim under the judgment for the Morrells on the counter claim. Mr. King, if you'll give me an order that reflects that, I will sign it. These proceedings will be concluded. Thank you very much.
MR. KING: Your Honor, when would you like the draft
THE COURT: Seven days. Circulate it before you submit
(Which was a transcript of proceedings held in the above-entitled matter as of this date.)
I hereby certify that the foregoing is an accurate transcript of proceedings held on June 30, 1993.
DATED 9/10/93 signed Kathie C. Pultz.